SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 395

RICHFIELD OIL CORPORATION, APPELLANT,

vs.

THE UNITED STATES OF AMERICA

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

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IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

[fols. 1-3] Citation in usual form, omitted in printing.

[fol. 4] [File endorsement omitted]

UNITED STATES OF AMERICA, Plaintiff,

v.

RICHFIELD OIL CORPORATION, Defendant

COMPLAINT—Filed April 30, 1947

The United States of America, seeking equitable relief by its attorneys, acting under the direction of the Attorney General of the United States, brings this action against defendant, Richfield Oil Corporation, and complains and alleges as follows:

Jurisdiction and Venue

1. This Complaint is filed and these proceedings are instituted against defendant under Section 4 of the Act of Congress of July 2, 1890, as amended (26 Stat. 209; 15 U. S. C. §4), entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," commonly known as the Sherman Antitrust Act, and under Section 5 of the Act of Congress of October 15, 1914, as amended (38 Stat. 736; 15 U. S. C. § 25), commonly known as the Clayton Act, in order to prevent and restrain continuing violations, as hereinafter alleged, of Section 1 of the Sherman Antitrust Act and Section 3 of the Clayton Act.

[fol. 5] 2. Richfield Oil Corporation has an office, transacts business, and is found within the Central Division of the Southern District of California. The alleged violations of law hereinafter described have been and are being carried out in part within the Central Division of the Southern District of California.

Defendant

3. Richfield Oil Corporation (hereinafter referred to as "Richfield"), which is made a defendant herein, is a corporation organized and exsting under the laws of the State of Delaware, with offices and its principal place of business in Los Angeles, California. Richfield is engaged in the business of acquiring and developing oil reserves and in producing, transporting, refining, and marketing petroleum and petroleum products therefrom in the States of California, Oregon, Washington, Nevada, Idaho, Arizona, Texas and New Mexico.

Definitions

4. The term "petroleum products" as used herein refers to those products that are obtained or manufactured from crude oil by refining and various other processes and sold or used as a fuel or lubricant for automotive vehicles, and includes gasoline, automotive lubricating oils, greases and various other miscellaneous special-purpose oils and compounds.

5. The term "automotive accessories" as used herein refers to replacement parts and articles, other than petroleum products, that are sold or used in servicing or repairing automotive vehicles, and includes tires, tubes, batteries, spark plugs, oil filters, fan belts, battery cables, auto lamp bulbs, fuses, windshield wiper blades, tire repair and vulcanizing kits, antifreeze, tire chains, and other like items.

6. The term "service station" as used herein, unless otherwise indicated, refers to a retail outlet dealing in and [fol. 6] dispensing Richfield petroleum products and/or automotive accessories.

7. The term "independent service station operator" as used herein refers to the operator of a service station who is not an employee of defendant and includes the operator of a service station of which the defendant may be the owner or senior-interest holder of the property leased by such operator.

8. The term "sponsored products" as used herein refers to those petroleum products and/or automotive accessories not manufactured or produced by defendant Richfield, but sold and distributed at service stations, the sale and dis-

tribution of which are handled by or arranged for at service stations by defendant Richfield.

9. The term "TBA distributor" (an abbreviation for a tire, battery and accessory distributor) is an independent businessman appointed by defendant Richfield, who receives and handles the orders of independent service station operators for automotive accessories within a marketing area designated by defendant Richfield.

10. The term "bulk plant" as used herein refers to a central supply depot for gasoline, oils, lubricants and other petroleum products, such plant being owned and operated by defendant Richfield and supplying petroleum products manufactured and produced by defendant to service stations.

Nature of Trade and Commerce

11. Defendant Richfield is engaged in the business of producing, refining, transporting and marketing petroleum products. It has oil reserves and producing wells in the oil fields of Texas, New Mexico, Oregon, Washington and California. Crude oil is transported by defendant from producing wells to its refineries located at Watson and Vinvale, California, at which refineries it is converted into gasoline and other petroleum products. Defendant also owns and operates two natural gasoline plants located in the State of California. The gasoline and petroleum prod- [fol. 7] ucts produced by defendant at its refineries and gasoline plants are shipped by the defendant from said plants and refineries to bulk plants located in the States of California, Oregon, Washington, Arizona, Nevada and Idaho, from which they are thereafter distributed to service stations in said States. Defendant also maintains pipelines, tank ships, water terminals, barges, tank cars, and automotive transportation systems located throughout the aforesaid States which are used by defendant in transporting its crude oil, petroleum and petroleum products from their place of acquisition or manufacture to bulk plants or service station outlets in said States.

12. Defendant Richfield owns and operates approximately 230 bulk plants from which it distributes its petroleum products to approximately 2,600 retail service stations located throughout the States of California, Oregon, Wash-

ington, Texas, Nevada and Idaho. All of said 2,600 service stations are operated by independent service station operators under written leases or painting and sales agreements with defendant. Approximately 1,200 of said service stations are leased to the operators thereof by the defendant under lease agreements under which possession of and the right to operate each service station is given to the lessee-operator, who agrees to pay monthly to the defendant as rental a fixed sum, plus an amount based on the number of gallons of gasoline received by the lessee-operator above a specified minimum. Some of these 1,200 service stations are owned by the defendant, and some of them are leased by the defendant from the owners thereof, including some of the operators. In addition to the aforesaid 1,200 service stations, approximately 1,400 service stations are operated by independant service station operators under painting and sales agreements entered into between defendant and said operators. Each of the painting agreements provides for the painting of a service station and equipment with Richfield colors and insignia, at the expense of defendant, with the agreement, however, that the opera- [fol. 8] tor of said service station will reimburse defendant for the expense of painting in the event of any breach of or the cancellation of a sales contract executed simultaneously with the painting agreement. Each sales agreement, which has been executed simultaneously with the painting agreement, contains an agreement by defendant to sell, and by the service station operator to buy from defendant, gasoline, lubricating oils and greases, in quantities between certain specified minimum and maximum amounts. The independent operators of these 1,400 service stations usually own the service stations themselves, or lease the same from the owner thereof.

13. All retail outlets at which gasoline, oils and greases are sold to the public are generally also good market outlets for the sale of automotive accessories. Lubrication and other automotive services are generally available to the public at said retail outlets. A full line of automotive accessories is also usually offered for sale and installation at said retail outlets. To an increasing extent such outlets are important markets for the sale and distribution of automotive accessories and services. Automotive acces-

sories are sold at service stations operated by independent service station operators, and such sales generally constitute a substantial volume of the business done at said service stations.

14. Defendant Richfield arranges for the distribution and sale to service stations operated by independent service station operators, of a number of petroleum products and automotive accessories not of its own manufacture or production. Such products, known as "sponsored products," are manufactured by companies located in the various states of the United States. Orders for sponsored products are generally placed with the manufacturers thereof by defendant or a "TBA distributor" with instructions to make shipment thereon from the place of manufacture to such "TBA distributor." Such shipments are generally made in interstate commerce by the manufacturer to the TBA distributor and by him sold and delivered to [fol. 9] independent service station operators. Orders received from the independent service station operator for automotive accessories not carried by said TBA distributor are placed with defendant, and such orders are thereupon transmitted by it to the manufacturing company. The manufacturer of the "sponsored products" bills defendant Richfield for all orders filled by it whether received from the defendant or received from the TBA distributor. The defendant in turn bills the TBA distributor for all sponsored products delivered to the TBA distributor by the manufacturer thereof. The TBA distributor bills the independent service station operator for all products ordered by him from or through the TBA distributor.

15. Service stations are customarily located at important highway intersections and at other readily accessible roadside locations on streets and arteries which carry extensive automotive traffic. The number of service station sites which will return reasonable profits to their operators in any given area is limited, and the 2,600 service stations whose operators have entered into the lease agreements, or painting and sales agreements, referred to in Paragraph 2 hereof, constitute a substantial portion of all the favorably situated retail outlets for petroleum products and automotive accessories available to motorists within the States

of California, Oregon, Washington, Nevada, Idaho and Arizona.

Offenses Charged

16. Beginning some time prior to 1939 and continuing thereafter up to and including the date of the filing of this Complaint, defendant Richfield has violated and is now violating Section 1 of the Act of Congress of July 2, 1890, as amended, commonly known as the Sherman Act, and Section 3 of the Act of Congress of October 15, 1914, as amended, commonly known as the Clayton Act, in that it has executed, entered into and is operating under contracts, consisting of written and oral agreements and understand- [fol. 10] ings, *hereinafter described,* between itself and independent service station operators, which contracts are in unreasonable restraint of, and substantially lessen competition in, interstate trade and commerce in petroleum products and automotive accessories products.

17. The written agreements entered into by defendant Richfield with independent service station operators, which are in full force and effect, are known as "service station leases," "sales contracts" and "painting agreements," referred to in Paragraph 12 herein. These written agreements have been modified and supplemented by oral contracts, agreements and understandings between the defendant and the independent service station operators which specify and restrict the brands of petroleum products and automotive accessories that may be used by, sold at, or distributed through approximately 2,600 said service stations located in the States of California, Oregon, Washington, Nevada, Idaho and Arizona.

18. The defendant has entered into a lease agreement as described in Paragraph 12 hereof with each of approximately 1,200 independent service station operators in the States named in Paragraph 17 hereof. Said lease contains a termination clause which permits the lease to be cancelled on 24 hours' notice by either party with or without cause. In addition to the terms of the written lease agreements, defendant has entered into supplemental oral contracts, agreements and understandings with each of the operator-lessees under said leases, whereby said operator-lessees agree to restrict the brands of petroleum products and auto-

motive accessories which are handled by them to those brands designated or approved by the defendant, and whereby said operator-lessees agree to acquire through a TBA distributor designated by the defendant all automotive accessories sold at their service stations.

19. The defendant has entered into a written painting agreement and a written sales agreement as described in Paragraph 12 hereof with each of approximately 1,400 independent service station operators in the States named [fol. 11] in Paragraph 17 hereof. The sales agreement contains a clause which permits the cancellation of said agreement by the defendant upon five days' written notice to the independent service station operator with or without cause, and the painting agreement contains a clause which provides that upon cancellation of the sales agreement, the operator must reimburse defendant Richfield for the expense of painting his service station. In addition to the terms of these written agreements, defendant has entered into supplemental oral contracts, agreements and understandings with each of said 1,400 independent service station operators, whereby said operators agree to restrict the brands of petroleum products and automotive accessories which are handled by them to those brands designated or approved by the defendant, and whereby said operators agree to acquire from sources designated by the defendant all automotive accessories sold at their service stations.

20. The defendant has required the aforesaid independent service station operators to enter into and adhere to agreements and understandings that said service station operators would handle only defendant's petroleum products or defendant's "sponsored products" by threats both expressed and implied that it will cancel said "service station lease" or "sales contract" unles said oral agreements and understandings described in Paragraphs 18 and 19 herein are entered into, adhered to and complied with by the independent service station operator. Defendant inspects, polices and supervises the activities and sales of the independent service station operators at the 2,600 service stations involved herein to make certain that no petroleum products or automotive accessories except those designated by defendant are sold, stored or handled by the independent service station operator at the service station operated by

him. In this manner, purchases of petroleum products and automotive accessories by the independent service station [fol. 12] operator are limited to those products specifically designated by Richfield for retail handling at the 2,600 service stations involved herein by the independent service station operators thereof. In instances too numerous to be herein mentioned, defendant has actually cancelled the written lease or sales agreement of an independent service station operator who refused to conform to the oral contracts, agreements and understandings complained of herein.

Effects

21. The aforesaid contracts, agreements and understandings, written and oral, and the action and conduct of the defendant in entering into and enforcing the same, throughout the States of California, Washington, Oregon, Nevada, Arizona and Idaho, have had the effect, as intended by the defendant of

(a) preventing and eliminating competition between defendant and other producers and manufacturers of petroleum products of like utility and quality at the 2,600 service stations involved herein;

(b) preventing and eliminating competition between the manufacturers and producers of automotive accessories sponsored by defendant, and other manufacturers and producers of automotive accessories of like utility and quality, at the 2,600 service stations involved herein;

(c) depriving the independent service station operators described herein of the opportunity of purchasing and handling at the 2,600 service stations involved herein, petroleum products and automotive accessories of their own selection and in competition with those produced or sponsored by defendant;

(d) depriving the independent service station operators herein described of the opportunity of purchasing [fol. 13] petroleum products and automotive accessories at prices determined by free and open competition among the producers and manufacturers of such products and according to reasonable and competitive terms and conditions of sale and of the benefits of dis-

counts obtained by direct factory purchasing where the volume of purchases by said independent service station operators would justify such discounts;

(e) securing to defendant a monopoly in and control over the sale of all petroleum products and automotive accessories sold at the service stations involved herein;

(f) restraining and substantially lessening the competition in interstate trade and commerce in petroleum products and automotive accessories hereinbefore described.

Prayer

Wherefore, the plaintiff prays:

1. That the Court adjudge and decree that the defendant Richfield has entered into contracts, consisting of written and oral agreements and understandings, which unreasonably restrain interstate trade and commerce in petroleum products and automotive accessories, in violation of Section 1 of the Sherman Act;

2. That the Court adjudge and decree that defendant Richfield has violated Section 3 of the Clayton Act through the execution of contracts which have substantially lessened and restrained competition in petroleum products and automotive accessories;

3. That the exclusive supply arrangements and oral understandings between defendant and the independent service station operators involved herein be declared void and of no effect, and in unreasonable restraint of and as substantially lessening competition in interstate commerce in [fol. 14] petroleum products and automotive accessories, and in violation of Section 1 of the Sherman Act and Section 3 of the Clayton Act;

4. That defendant Richfield be enjoined from cancelling any lease agreements or sales contract agreements which it may have with any independent service station operator on the ground or for the reason that such operator threatens to or has purchased or dealt in petroleum products produced or manufactured by companies other than defendant, or has sold or dealt in automotive accessories other than those authorized or sponsored by defendant company;

5. That defendant Richfield and its officers, directors, agents, representatives, and all persons and corporations

acting or claiming to act on its behalf, be perpetually enjoined from entering into or enforcing any written or oral contract, agreement, or understanding, express or implied, with any independent service station operator, or from inducing or compelling, or attempting to induce or compel, by any means whatever, any independent service station operator to enter into any contract, agreement, or understanding of any kind whatsoever which provides:

(a) that the independent service station operator shall secure all of his requirements of petroleum products from defendant Richfield, or shall not handle the petroleum products of any other company;

(b) that the independent service station operator shall secure all his requirements of any one or more types of automotive accessories from or through defendant Richfield, or will not handle accessories competitive with those distributed or sponsored by defendant;

(c) that the sale of any petroleum product or automotive accessory by defendant to any independent service station operator shall be conditioned on the handling by the independent service station operator [fol. 15] of petroleum products or automotive accessories manufactured or sponsored by the defendant;

6. That plaintiff have such other and further relief as the nature of the case may require and the Court may deem proper in the premises, and that plaintiff recover the costs of this suit;

7. That pursuant to Section 5 of the Sherman Antitrust Act an order be made and entered herein requiring the defendant named herein to be brought before the Court in this proceeding as party defendant, and directing the Marshal of the Southern District of California to serve a summons upon it, and demanding that it appear herein and answer the allegations contained in this Complaint and thereafter abide by and perform such orders and decrees as the Court may make and enter.

Dated April 30, 1947.

William C. Dixon, Special Assistant to the Attorney General; W. Alan Thody, Special Assistant to

the Attorney General; Tom C. Clark, Attorney General; Wendell Berge, Assistant Attorney General; George B. Haddock, Special Assistant to the Attorney General; James M. Carter, United States Attorney for the Southern District of California.

[fol. 16] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER—Filed November 2, 1948

Richfield Oil Corporation, Defendant, answers the complaint on file herein as follows:

(For convenience, paragraph numbers correspond to paragraph numbers of the complaint.)

1. Defendant denies that it has committed any violation, continuing or otherwise, of Section 1 of the Sherman Anti-Trust Act or of Section 3 of the Clayton Act as alleged in paragraph 1 of the complaint.

2. Defendant admits that it has an office and transacts business and is found within the Central Division of the Southern District of California. Defendant denies all of the other allegations of paragraph 2 of the complaint.

3. Defendant admits that it is a corporation organized [fol. 17] and existing under the laws of the State of Delaware with offices and its principal place of business in Los Angeles, California. Defendant admits further that it has acquired oil reserves in the State of California, that it is producing crude petroleum in the State of California, that it is refining crude petroleum into petroleum products in the State of California, that it transports and markets petroleum products in the States of California, Oregon, Washington, Nevada, Idaho and Arizona. Except as herein expressly admitted, defendant denies each and every allegation contained in paragraph 3 of the complaint.

4. to 10. (incl.) Answering paragraphs 4 to 10 inclusive, defendant admits that the terms therein referred to

are used by plaintiff as therein defined but denies that all or any of the definitions constitute the normal or accepted meaning of said terms or are accurate.

In particular, defendant denies that the definition of "sponsored products" as alleged in paragraph 8 is accurate; and in this connection, defendant denies that the sale or distribution of petroleum products or automotive accessories at service stations are handled by or arranged for by defendant.

Defendant is without knowledge or information sufficient to form a belief as to the accuracy of the definition of "TBA distributor" as alleged in paragraph 9; particularly in view of its lack of knowledge of the precise meaning of the vague and uncertain term, "appointed"; and defendant denies that the "TBA distributor" is or has been appointed by defendant in the capacity of an agent or other representative of defendant.

11. Defendant admits that it is engaged in the business of producing, refining, transporting and marketing petroleum and petroleum products. Defendant admits further that it has oil reserves and producing wells in certain oil fields in the State of California. Defendant admits that [fol. 18] crude oil is transported by defendant from producing wells in California to its refineries located at Watson and Vinvale, California, and that at the refinery located at Watson, California, crude oil is refined into gasoline and other products.

Defendant admits that it owns and operates two natural gasoline plants located in the State of California. Defendant admits that gasoline and other petroleum products refined at the said natural gasoline plants in the State of California are shipped by defendant to defendant's refinery at Watson, California. Defendant admits further that the gasoline and petroleum products refined by defendant at its refinery at Watson, California, are in some instances shipped by defendant from said refinery to bulk plants located in the States of California, Oregon, Washington, Arizona, Nevada and Idaho; and defendant alleges that in excess of sixty-five per cent (65%) of the gasoline and petroleum products refined by defendant at its refinery at Watson, California and transported by it to

States other than California, are shipped by defendant from said refinery to marine terminals rather than to bulk plants. Defendant admits that gasoline and petroleum products stored in bulk plants in said States are sold and delivered from time to time to service stations located in the respective States in which said bulk plants are located.

Defendant admits that it maintains pipe lines within the State of California which are used by defendant in transporting crude oil and petroleum products between points solely in the State of California; but defendant denies that its pipe lines in California are used by defendant for the transportation of petroleum products to any service stations. Defendant denies further that it maintains pipe lines in any states other than the State of California for the transportation of crude oil, petroleum or petroleum products. Defendant admits that it maintains tank ships, barges, tank cars and automotive vehicles which are used [fol. 19] by defendant in transporting petroleum products from defendant's refinery at Watson, California, to marine terminals and bulk plants located in the States of California, Oregon, Washington, Arizona, Nevada and Idaho; and defendant admits that it maintains automotive vehicles which are used by defendant in making deliveries of petroleum products from certain bulk plants to service stations located in the respective States in which said bulk plants are located.

Defendant alleges that all shipments of petroleum products from their place of manufacture at defendant's refinery at Watson, California, which are or have been made to marine terminals or bulk plants located in States other than California, have been made for the purpose of meeting anticipated requirements of sale within said respective states of destination, and that any interstate commerce involved in the transportation or shipment of said petroleum products to said states other than California ceases and has ceased at the time of unloading of said petroleum products at the respective marine terminals and bulk plants, as the case may be, in said respective states other than California.

Except as hereinabove expressly admitted, defendant

denies each and every allegation contained in paragraph 11 of the complaint.

12. Defendant admits that it owns one hundred seven (107) bulk plants within the State of California, of which number twenty-three (23) are operated by defendant and eighty-four (84) are operated by commission agents; and admits that from said one hundred seven (107) bulk plants, petroleum products are distributed by defendant and said commission agents to fifteen hundred seventy-seven (1577) retail service stations located within the State of California.

Defendant admits that it owns thirty-five (35) bulk plants within the State of Oregon, of which number two (2) are [fol. 20] operated by defendant and thirty-three (33) are operated by commission agents; and admits that from said thirty-five (35) bulk plants, petroleum products are distributed by defendant and said commission agents to three hundred eighty-eight (388) retail service stations located within the State of Oregon.

Defendant admits that it owns thirty-six (36) bulk plants within the State of Washington, of which number four (4) are operated by defendant and thirty-two (32) are operated by commission agents; and admits that from said thirty-six (36) bulk plants, petroleum products are distributed by defendant and said commission agents to six hundred forty-six (646) retail service stations located within the State of Washington.

Defendant admits that it owns seven (7) bulk plants within the State of Nevada, all of which bulk plants are operated by commission agents; and admits that from said seven (7) bulk plants, petroleum products are distributed by said commission agents to thirty-nine (39) retail service stations located within the State of Nevada.

Defendant admits that it owns five (5) bulk plants within the State of Idaho, all of which bulk plants are operated by commission agents; and admits that from said five (5) bulk plants, petroleum products are distributed by said commission agents to fifty-six (56) retail service stations located within the State of Idaho.

Defendant admits that it owns twenty-two (22) bulk plants within the State of Arizona, of which number two (2) are operated by defendant and twenty (20) are operated

by commission agents; and admits that from said twenty-two (22) bulk plants, petroleum products are distributed by defendant and said commission agents to one hundred ninety (190) retail service stations located within the State of Arizona.

Defendant admits that in an insignificant number of [fol. 21] instances petroleum products have been delivered from bulk plants in one State to service stations located in other States.

Defendant alleges that from the bulk plants enumerated in this paragraph 12 it has currently sold and delivered to purchasers other than service stations in excess of twenty-seven per cent (27%) of the petroleum products delivered to said bulk plants.

Defendant admits that as of the date of the filing of this answer fourteen hundred two (1402) service stations are leased by defendant to the operators thereof under written lease agreements, and that eight hundred fifty-three (853) of said service stations are located in the State of California. Defendant admits that said lease agreements contain provisions substantially as alleged in paragraph 12 of the complaint, but denies that said lease agreements are all uniform or identical or contain the same terms or provisions. Defendant admits that with respect to said fourteen hundred two (1402) service stations, defendant owns or leases from the owner thereof, (who in some few instances is the operator of the service station) either the land or the land and service station buildings and equipment.

Defendant admits that it has entered into written sales agreements or written sales agreements and written painting agreements with service station operators and that as of the date of the filing of this answer eleven hundred seventy (1170) written sales agreements or written sales agreements and written painting agreements are in effect, and that five hundred thirty-five (535) of the service stations covered by said agreements are located in the State of California. Defendant denies that in each instance a written painting agreement and a written sales agreement have been executed simultaneously relating to a particular service station. Defendant admits that said written paint-

ing agreements provide for the painting of the service [fol. 22] station in Richfield colors and insignia at the expense of defendant and provide for the reimbursement of the expense of painting to defendant by the operator of the service station under certain terms and conditions, but defendant denies that said painting agreements provide for reimbursement to defendant upon the conditions alleged in paragraph 12 of the complaint; and defendant denies further that said painting agreements are all uniform or identical or contain the same terms or provisions. Defendant alleges that the written painting agreements were entered into by defendant for the purpose, among others, of meeting the competition of defendant's competitors who were offering like or similar painting benefits to service station operators. Defendant admits that said written sales agreements contain provisions substantially as alleged in paragraph 12 but denies that said written sales agreements are all uniform or identical or contain the same terms or provisions. Defendant admits that the operators of said eleven hundred seventy (1170) service stations usually own the service stations themselves or lease the same from the owners thereof.

Defendant alleges that various of said written leases, painting agreements and sales agreements in effect at the time of the filing of the complaint have subsequently expired, and that subsequent to the filing of the complaint, defendant has entered into additional written leases, painting agreements and sales agreements and that defendant cannot identify the particular written leases, painting agreements and sales agreements referred to in the complaint, and that the admissions herein contained do not, therefore, apply to any particular written lease, sales agreement or painting agreement.

Except as hereinabove expressly admitted, defendant denies each and every allegation contained in paragraph 12.

13. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of [fol. 23] paragraph 13, particularly in view of its lack of knowledge of the precise meaning of the vague and uncertain terms therein contained, including "good market

outlets", "a full line of automotive accessories", "important markets", and "a substantial volume of business".

14. Defendant denies that it arranges for the distribution or sale to service stations operated by service station operators of petroleum products or automotive accessories not of its own manufacture or production, as alleged in paragraph 14; and in this connection defendant alleges:

(a) That it is necessary for a service station operator, in order to compete successfully with other service station operators, to handle and sell automotive accessories in addition to petroleum products.

(b) That defendant has investigated from time to time the quality and prices of various items of automotive accessories and on the basis of such investigation has selected from time to time particular brands of nationally advertised products which in defendant's opinion are the best or the equivalent of the best automotive accessories of the particular type available for handling and sale at service stations.

(c) That defendant has from time to time recommended to service station operators handling defendant's petroleum products the purchase and resale by them of automotive accessories so selected by defendant from time to time, which recommendations were made on the basis that such purchase and resale would be beneficial to such service station operators for various reasons including:

(1) The quality of such automotive accessories;

(2) The favorable public acceptance thereof; and

[fol. 24] (3) The favorable price and discount terms available from the manufacturers and other suppliers thereof.

(d) That defendant has authorized service station operators to sell such recommended automotive accessories on credit cards issued by defendant to members of the public.

Defendant denies that orders for automotive accessories are or were generally placed with the manufacturer thereof by defendant or a "TBA distributor" with instructions to make shipment thereon from the place of manufacture to the "TBA distributor".

Defendant denies further that the shipments therein referred to are or were generally made in interstate commerce by the manufacturer to the "TBA distributor".

Defendant denies that defendant receives any orders from any service station operator for automotive accessories.

Defendant denies that the manufacturer of the "sponsored products" bills or has billed defendant for all orders filled by such manufacturer.

Defendant denies further that defendant bills the "TBA distributor" for all "sponsored products" delivered to the "TBA distributor" by the manufacturer thereof.

Defendant here realleges its denial in paragraphs 4 to 10 of this answer that the definitions of "sponsored products" and "TBA distributor", as alleged in paragraphs 8 and 9 of the complaint, are accurate.

15. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 15, particularly in view of its lack of knowledge of the precise meaning of the vague and uncertain terms therein contained, including "important highway intersections", "reasonable profits", and "a substantial portion of all the favorably situated retail outlets for petroleum products and automotive accessories available to motorists". [fol. 25] 16. Defendant denies each and every allegation contained in paragraph 16.

17. Defendant admits that certain written agreements between defendant and certain service station operators are known as "service station leases", "sales contracts" and "painting agreements"; and in this connection, defendant realleges the allegation in paragraph 12 of this answer that defendant cannot identify the particular written leases, painting agreements and sales agreements referred to in paragraph 17.

Except as herein expressly admitted, defendant denies each and every allegation contained in paragraph 17.

18. Defendant realleges the admission in paragraph 12 of this answer that as of the date of the filing of this answer fourteen hundred two (1402) service stations are leased by defendant to the operators thereof under written lease agreements, and that eight hundred fifty-three (853)

of said service stations are located in the State of California. Defendant realleges the allegation of paragraph 12 of this answer that defendant cannot identify the particular written leases referred to in paragraph 18. Defendant admits that the written lease agreements which are in effect as of the date of the filing of this answer contain termination clauses substantially as alleged in paragraph 18 of the complaint but denies that said lease agreements are all uniform or identical or contain the same terms or provisions.

Except as herein expressly admitted, defendant denies each and every allegation contained in paragraph 18.

19. Defendant realleges the admission in paragraph 12 of this answer that as of the date of the filing of this answer eleven hundred seventy (1170) written sales agreements or written sales agreements and written painting agreements are in effect, and that five hundred thirty-five (535) of the service stations covered by said agreements [fol. 26] are located in the State of California. Defendant realleges the allegation of paragraph 12 of this answer that defendant cannot identify the particular written painting agreements and written sales agreements referred to in paragraph 19 of the complaint, and defendant realleges the denial in paragraph 12 of this answer that in each instance referred to in paragraph 19 of the complaint both a written painting agreement and a written sales agreement have been entered into with each of the service station operators therein referred to.

Defendant admits that certain of the written sales agreements now in effect between defendant and certain service station operators contain a clause which permits the cancellation thereof by defendant upon five days' written notice to the service station operator, but defendant denies that all written sales agreements now in effect contain such clause; and defendant denies further that said written sales agreements are all uniform or identical or contain the same terms or provisions.

Defendant admits that the painting agreements now in effect between defendant and certain service station operators contain a clause providing for the reimbursement to defendant by the service station operator for the expense

of painting the service station upon certain terms and conditions, but defendant denies that said painting agreements provide for reimbursement to defendant upon the conditions alleged in paragraph 19 of the complaint; and defendant denies further that said painting agreements are all uniform or identical or contain the same terms or provisions.

Except as herein expressly admitted, defendant denies each and every allegation contained in paragraph 19.

20. Defendant denies each and every allegation contained in paragraph 20.

21. Defendant denies each and every allegation contained in paragraph 21.

[fol. 27] Second Defense

The complaint fails to state a claim against defendant upon which relief can be granted.

Third Defense

The plaintiff has failed to join indispensable parties, in that plaintiff has failed to join as parties hereto the persons, firms and corporations with whom defendant is alleged to have made the written and oral contracts, agreements and understandings referred to in paragraphs 12, 16, 17, 18, 19 and 20 of the complaint, which written and oral contracts, agreements and understandings plaintiff prays be declared void and of no effect.

Fourth Defense

Plaintiff has failed to join persons, firms and corporations who ought to be parties to this action if complete relief is to be accorded between those already parties hereto, in that plaintiff has failed to join as parties hereto the persons, firms and corporations with whom defendant is alleged to have made the written and oral contracts, agreements and understandings referred to in paragraphs 12, 16, 17, 18, 19 and 20, which written and oral contracts, agreements and understandings plaintiff prays be declared void and of no effect. Said persons, firms and corporations are subject to the jurisdiction of the Court as to both service of process and venue and can be made parties without

depriving the Court of jurisdiction of the present parties before it.

Fifth Defense

The application and enforcement herein sought of Section 1 of the Act of Congress of July 2, 1890, as amended, 26 Stats. 209, 15 U.S.C. 1, commonly known as the Sherman Act, and of Section 3 of the Acts of Congress of October 15, 1914, as amended, 38 Stats. 731, 15 U.S.C. 14, commonly known as the Clayton Act, would enable defendant's com-
[fol. 28] petitors to contract with defendant's existing and prospective customers upon terms which would be denied defendant, with the result that defendant would be unable to compete on equal terms with its competitors and would be eliminated from competition for the business of said existing and prospective customers to defendant's irreparable injury. The application and enforcement herein sought of said Sections of the Sherman Act and Clayton Act would tend to eliminate defendant as a competitive factor in the business of marketing petroleum products, and such result would be contrary to the purpose of said Sherman Act and Clayton Act.

Sixth Defense

At the time of the commencement of this action, there was and is now pending and undisposed of in the District Court of the United States for the District of Columbia another civil action brought by this plaintiff against this defendant and others, being No. 8524 and entitled "United States of America, Plaintiff, vs. American Petroleum Institute, et al., Defendants". The charges made and the relief sought by the complaint herein are substantially the same as certain of the charges made and certain of the relief sought against defendant herein by the complaint in said action No. 8524.

Wherefore, Defendant Prays that proceedings herein be stayed pending a final determination of said action No. 8524, and the plaintiff take nothing at any time by reason of its complaint herein, and that this action be dismissed, and for such costs as may lawfully be awarded defendant,

and for such other and further relief as the Court may deem proper in the premises.

Dated: November 2, 1948.

William J. DeMartini, David Guntert, M. W. Phelan, Krystal & Paradise, Robert E. Paradise, by Robert E. Paradise, Attorneys for Defendant.

[fol. 29] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION AND ORDER RE DEFENDANT'S AMENDMENT TO ANSWER—Filed June 26, 1950

It is hereby stipulated by and between the parties hereto, by and through their respective attorneys, that defendant Richfield Oil Corporation may serve and file the attached Amendment to Answer in the above entitled matter.

Dated: June 23, 1950.

William C. Dixon, Special Assistant to the Attorney General; Theron M. Hall, Special Attorney; Lawrence W. Somerville, Special Attorney. By William C. Dixon; Attorneys for Plaintiff.

[fol. 30] William J. DeMartini, David Guntert, M. W. Phelan Krystal & Paradise, Robert E. Paradise. By Robert E. Paradise; Attorneys for Dedendant.

It is so Ordered. Dated: June 26, 1950.

Peirson M. Hall, Judge of the United States District Court.

[fol. 31] IN UNITED STATES DISTRICT COURT

[Title omitted]

AMENDMENT TO ANSWER OF DEFENDANT—June 20, 1950

Pursuant to stipulation of counsel and by leave of Court, defendant Richfield Oil Corporation files this amendment to its answer on file herein.

A. The following is hereby added to defendant's answer to paragraphs 4 to 10 (inclusive) by insertion therein following line 20 on page 2 of its answer:

"In particular, defendant denies that the definition of 'independent service station operator' as alleged in paragraph 7 is accurate; and in this connection defendant denies that the operator of a service station which is owned by defendant and leased to such operator or the operator of a service station which is leased by defendant from a party other than the operator thereof and thereafter subleased by defendant to such operator are 'independent' [fol. 32] service station operators under the facts and circumstances admitted and alleged in paragraph 18 of the answer as amended herein. Defendant alleges that the relationship between defendant and any such operator is not independent and that under the facts and circumstances alleged in paragraph 18 of this amendment to answer, the relationship between defendant and any such operator is analogous to the relationship of agency or to the relationship of employment for the purposes of and within the scope and meaning of the Acts of Congress commonly known as the Sherman Anti-Trust Law and Clayton Act, respectively."

B. The following is hereby added to defendant's answer to paragraph 18 by insertion therein following line 25 on page 10 of its answer:

"Defendant denies the allegation of paragraph 18 that defendant has entered into supplemental oral contracts, agreements and understandings with each of the operators-lessees under said leases, whereby said operators-lessees agree to restrict the brands of petroleum products and automotive accessories which are handled by them to those brands designated or approved by the defendant, and

whereby said operators-lessees agree to acquire through a TBA distributor designated by the defendant all automotive accessories sold at their service stations. In this connection, defendant admits that each of the service stations owned by defendant or leased by defendant from a party other than the operator thereof was acquired and/or constructed by defendant as an outlet for the sale of defendant's petroleum products to the motoring public; and defendant admits further that each operator of any such service station has been selected and trained by defendant and has been permitted by defendant to occupy said service station and use defendant's land, buildings, facilities and equipment on a temporary basis subject to termination on twenty-four hours' notice. Defendant alleges that such occupancy of any such service station by any such [fol. 33] operator was and is upon the understanding, express or implied, that defendant has the right to designate, as a condition upon such operator's continued occupancy thereof, the manner of such operator's maintenance and operation of the station including, among other matters, the appearance and cleanliness thereof, and the nature and extent of the services to be rendered to the motoring public and on the understanding, express or implied, as a condition upon such operator's continued occupancy thereof that only defendant's petroleum products be handled or sold in such service station, subject to such exceptions as defendant may permit from time to time. Defendant alleges that the relationship between defendant and any such operator is analogous to the relationship of agency or to the relationship of employment for the purposes of and within the scope and meaning of the Acts of Congress commonly known as the Sherman Anti-Trust Law and the Clayton Act, respectively. Defendant alleges further that under the facts and circumstances above admitted and alleged, the trade, custom and business of any such service station as conducted by any such operator is the trade, custom and business of defendant herein and is not the subject matter of competition."

Dated: June 20, 1950.

William J. DeMartini, David Guntert, M. W. Phelan, Krystal & Paradise, Robert E. Paradise. By S. Robert E. Paradise; Attorneys for Defendant.

[fol. 34] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

REQUEST FOR ADMISSION UNDER RULE 36—Filed October 13, 1950

Defendant, Richfield Oil Corporation, requests plaintiff, United States of America, within ten days after service of this request, to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

1. That each of the following documents, exhibited with this Request, is genuine.

(a) Telegram dated December 2, 1941, sent to C. S. Jones, President, Richfield Oil Corporation, by the Petroleum Coordinator for War and signed by Ralph K. Davies, Deputy Petroleum Coordinator.

(b) Telegram dated September 9, 1943, sent by the Petroleum Administrator for War to E. W. Isom, [fol. 35] Sinclair Refining Co. and signed by Geo. L. Parkhurst, Chief New Facilities and Economics Section, Refining Division.

(c) Agreement dated February 3, 1942, between Defense Supplies Corporation and Richfield Oil Corporation, and executed on behalf of Defense Supplies Corporation by H. A. Mulligan, President, and by Dudley H. Diggs, Acting Secretary, and executed on behalf of Richfield Oil Corporation by H. F. Sinclair, Chairman of the Board of Directors and Cleve B. Bonner, Secretary.

(d) Agreement dated February 20, 1943, between Defense Supplies Corporation and Richfield Oil Corporation and executed on behalf of Defense Supplies Corporation by H. A. Mulligan, President and H. H. Turner, Secretary, and on behalf of Richfield Oil Corporation by Chas. S. Jones, President, and C. B. Bonner, Secretary.

2. That each of the following statements is true:

(a) That the above described telegrams were sent by the persons signing the same in their respective stated capacities on behalf of the Petroleum Coordinator for War and of the Petroleum Administrator for War, respectively, which were instrumentalities of the United States of America.

(b) That Defense Supplies Corporation, party to the agreement above described, was an instrumentality of the United States of America.

Dated: October 13, 1950.

Wm. J. DeMartini, David Guntert, M. W. Phelan, Krystal & Paradise, Robert E. Paradise, Attorneys for Defendant. By Wm. J. DeMartini.

[fol. 36] 1941 Dec. 2 PM 9:19

"C. S. Jones, President
Richfield Oil Corporation
555 South Flower Street
Los Angeles

"To further consider urgent necessity for rapid expansion of 100 Octane aviation refining capacity we are requesting all manufacturers of this product to meet with us here Wednesday, December 10. Will you please anticipate this in connection with meeting of petroleum industry council on December 8. Further, we would like that one or more technical representatives of your company be present at 100-Octane meeting prepared to furnish complete information on all phases aviation gasoline manufacture and disposition, including production, stocks, and disposition all components all grades as well as all contracts and commitments outstanding. Technical representatives should plan to remain in Washington following meeting for period of week or ten days to assist in assembly and interpretation of information. Please wire acknowledgement.

Ralph K. Davies, Deputy Petroleum Coordinator."

[fol. 37] 1943 Sep. 9 PM 2:54

WU25 59 Govt 3 Extra
ID Washington DC Sep. 9 237P

E W Isom
Sinclair Refining Co.

Understand that you desire in connection with Certificate of Necessity application for Richfield Oil Corporation 100 Octane aviation gasoline project now under construction confirmation that this project is being installed as part of expansion program requested by PAW to meet indicated shortage of 100 Octane aviation gasoline, particularly on west coast. This will confirm that fact.

Geo. L. Parkhurst, Chief New Facilities and Economics Section Refining Divn.

250P

[fol. 38] Revised February 3, 1942.

As submitted to and approved by the Board of Directors at meeting held Tuesday, February 17, 1942.

Steve B. Banner.

CONTRACT between DEFENSE SUPPLIES CORPORATION and RICHFIELD OIL CORPORATION

100-Octane Aviation Gasoline

February 3, 1942

[fol. 39] DEFENSE SUPPLIES—RICHFIELD CONTRACT

(Watson, California, Refinery)

Revised February 3, 1942.

Contract made as of February 3, 1942, between Richfield Oil Corporation, a Delaware Corporation, having its principal business office at 555 South Flower Street, Los Angeles, California, hereinafter called Seller, and Defense Supplies Corporation, a corporation created by Reconstruction Finance Corporation, pursuant to Section 5 (d) of the Reconstruction Finance Corporation Act as amended, having its principal place of business at Washington, D. C., hereinafter called Buyer.

In consideration of the mutual agreements herein contained the parties agree as follows:

I. *Expansion of Seller's Refining Facilities.*

Seller has facilities for the production at Watson, California, of approximately one thousand seven hundred (1,700) barrels per calendar day of 100-Octane aviation gasoline and is willing to expand its facilities, at an estimated cost of approximately Three Million Dollars ($3,000,000.00), to a degree which it is estimated will enable Seller to produce at Watson, California, approximately three thousand seven hundred fifty (3,750) barrels per calendar day of 100-Octane aviation gasoline. Seller shall use its best efforts to expand said facilities and shall endeavor to maintain work on said expansion day and night in so far as the requisite labor and materials are available. Seller shall use its best efforts to complete such expansion as soon as possible and not later than January 1, 1943. The force majeure provisions set forth in Section X hereof shall apply in all respects to the expansion of facilities as well as to the sale of gasoline and all other obligations of Seller.

II. *Sale and Storage of Products.*

(a) When the aforesaid expansion of Seller's facilities shall be completed and ready for operation, Seller shall promptly notify Buyer; and from and after receipt of such notification Seller shall sell and deliver and Buyer shall buy and receive, in accordance with provisions of this contract, seventy-five thousand (75,000) barrels per calendar month of 100-Octane aviation gasoline which shall be in accordance [fol. 40] with the specifications set forth in Exhibit A attached hereto and made a part hereof or any other specification which by mutual agreement shall be attached as an addendum to Exhibit A. Wherever in this contract provision is made for the sale and delivery to Buyer of a stated quantity of gasoline such quantity is an aggregate quantity of the various kinds of gasoline specified in Exhibit A collectively considered. Buyer may apportion such aggregate quantity among the various kinds of gasoline.

(b) Buyer on giving reasonable notice to Seller may require the delivery hereunder of 100-Octane aviation gasoline of specifications other than those originally set forth in

Exhibit A which are capable of being produced with the same refining facilities and the same raw materials as are used in producing 100-Octane aviation gasoline in accordance with the specifications originally set forth in Exhibit A. The prices, specifications and quantities of such products shall be determined by negotiation between the parties, and Seller shall not be required to deliver such products unless and until an agreement has been reached. Such agreement shall be reduced to writing as an addendum to Exhibit A.

(c) The term "barrel" as used in this contract means a barrel of forty-two (42) gallons and a gallon is a United States gallon of two hundred and thirty-one (231) cubic inches.

(d) Seller shall maintain storage facilities at, or in the vicinity of, Watson, California, to accommodate at least one hundred fifty thousand (150,000) barrels of 100-Octane aviation gasoline. Subject to Section VIII hereof, Buyer shall order and take deliveries in such quantities as it may determine; provided, however, that whenever Seller's above-specified storage facilities for said aviation gasoline shall be filled, Seller shall not be obligated to produce any more of said gasoline for delivery to Buyer hereunder until Buyer shall have substantially reduced by purchase and removal the amount of gasoline in storage. If such full storage condition exists, Seller shall have the right to diminish the quantities otherwise to be delivered to Buyer by an amount equal to the amount of 100-Octane aviation gasoline which was produced during such full storage condition or which would have been produced except for such full storage condition. If, however, Seller shall produce during any such period of full storage any additional 100-Octane aviation gasoline of the kind covered by this contract, then such addi- [fol. 41] tional aviation gasoline shall be treated as covered by Section III hereof. In accumulating said storage, Seller may store gasoline of the specifications last ordered by Buyer unless Buyer otherwise directs by written notice; and Buyer in ordering deliveries shall first order against the gasoline storage; provided, however, that on Buyer's request and if Seller can do so without extra cost, Seller shall change the gasoline in storage to meet other specifications covered in Exhibit A hereof.

III. *Optional Gasoline.*

Buyer shall have the option from time to time and at any time to purchase from Seller all or any part of the 100-Octane aviation gasoline which Seller may produce between the execution of this contract and the date of receipt by Buyer of notification of the completion of the expansion of said facilities to the extent that such gasoline is in excess of quantities which Seller has, prior to receipt of notification of exercise of such option, contracted to sell to parties other than Buyer. Upon the exercise of such option Seller shall, subject to Section V (c) hereof, operate the facilities at full capacity or at least to an extent sufficient to satisfy Buyer's indicated requirements.

Buyer shall also have the option from time to time and at any time to purchase all or any part of the 100-Octane aviation gasoline which Seller may produce between said receipt by Buyer of notification of completion and the expiration of this contract. Upon the exercise of such option Seller shall, subject to Section V (c) hereof, operate the facilities at full capacity or at least to an extent sufficient to satisfy Buyer's indicated requirements.

The options granted in this Section III shall terminate on any termination of this contract.

IV. *Price and Payment.*

The base price of 100-Octane aviation gasoline specified as Item 1 of Exhibit A hereof, shall be thirteen and one-half cents ($0.135) per gallon f.o.b. Seller's refinery at Watson, California. The base price of 100-Octane aviation gasoline specified as Item 2 of Exhibit A hereof shall be thirteen and one-quarter cents ($0.1325) per gallon f.o.b. Seller's refinery at Watson, California. The base prices of other kinds of 100-Octane aviation gasoline shall be as specified [fol. 42] by addenda to Exhibit A hereof. Seller represents that there has not been included in its computation of such prices any allowance for depreciation, amortization and obsolescence in excess of ten per cent (10%) per annum of that portion of the original estimated cost of the refining facilities used in the manufacture of said 100-Octane aviation gasoline which is properly allocable to such manufacture. Nothing in the preceding sentence shall preclude

Seller from using a different rate or rates for tax and accounting purposes.

Buyer shall pay promptly, but not later than the twentieth (20th) day after the end of each calendar month, all money due for gasoline delivered to it by Seller during said month. On or before the tenth (10th) day of each calendar month, Seller shall render to Buyer a statement setting forth the quantity of aviation gasoline delivered during the preceding month, the price per gallon, and the total amount to be paid therefor. Copies of the certificates of inspection referred to in Section IX hereof shall accompany the aforesaid monthly statements.

V. *Price Escalation.*

The prices of 100-Octane aviation gasoline purchased hereunder shall be subject to adjustment as follows:

(a) The said prices are based on a price of one dollar and eleven cents ($1.11) per barrel for Signal Hill crude, twenty-six degrees (26°) A.P.I., deliverable to Seller in the Los Angeles Basin Field. The price shall be increased or decreased six hundred eight ten-thousandths of one cent ($0.000608) per gallon for each one cent ($0.01 advance or decrease in the average price paid for said crude over or under one dollar and eleven cents ($1.11) per barrel by the three (3) largest purchasers of such crude in the Los Angeles Basin Field. The prices posted for such crude in the Los Angeles Basin Field by such purchasers shall constitute prima facie evidence of the prices paid by such purchasers.

(b) The said prices shall also be increased or decreased by seven hundred twenty-two ten-thousandths of one cent ($0.000722) per gallon for each one point increase or decrease in the wholesale price Index Number for "All Commodities other than Farm Products and Foods", as now published by the Bureau of Labor Statistics, United States Department of Labor, which index figure is now ninety-[fol. 43] three and five-tenths (93.5). The effective date of a change in price due to a change in the index number shall be the date of publication by the Bureau of Labor Statistics of the latest final monthly index number, regardless of what Seller's crude inventory may be at the time of such change. If said index shall cease to be issued, the parties shall use

such other index as may most closely approximate the discontinued one, and if they shall be unable to agree within ten (10) days after notice of such discontinuance as to the index to be substituted, the determination of the new index shall be made by arbitration under Section XI hereof.

(c) The prices hereinabove set forth are based upon present normal methods of transporting petroleum raw materials to Seller's refinery at Watson, California, and upon a normal operation of that refinery, in which substantial quantities of motor fuel and other products must necessarily be produced and sold in connection with the production of 100-Octane aviation gasoline. If it becomes necessary to transport petroleum raw materials to said refinery by other than present normal methods thereby incurring additional costs of transportation, or if through an abnormal reduction of available markets for motor fuel and petroleum products other than 100-Octane aviation gasoline, or if by reason of any cause or condition (whether or not of the same class or kind) resulting directly or indirectly from the existence of a state of war, the normal functioning of any refinery at which any portion of the 100-Octane aviation gasoline supplied hereunder is manufactured shall be interfered with to such an extent that in the opinion of Seller the cost of refining 100-Octane aviation gasoline is increased in respects other than those corrected by adjustment of the base price under the above paragraphs (a) and (b), Seller may give notice to Buyer that the delivery of 100-Octane aviation gasoline will be reduced in an amount sufficient in the judgment of Seller to offset the added cost of refining unless Buyer shall agree with Seller to increase the price paid for 100-Octane aviation gasoline by an amount sufficient to offset such increased cost. If within ten (10) days after the date of mailing such notice Buyer advises Seller that it does not elect to take such reduced output and Buyer and Seller are unable to agree upon the [fol. 44] amount of such increase in price within ten (10) days thereafter, Buyer may give notice to Seller that it desires to have the amount of such increase fixed by arbitration in accordance with Section XI hereof. The arbitrators to be chosen in this instance shall be persons who have had at least ten (10) years' experience in the petro-

leum business and who are not connected with either of the parties hereto. The arbitrators shall be directed to make their findings as to the amount and effective date of such price increase within fifteen (15) days after the appointment of the last-appointed arbitrator and if no decision is reached by the arbitrators within such period, the production of 100-Octane aviation gasoline by the refinery affected may be reduced as above provided.

In making adjustments under this Section V, the prices to be adjusted shall be those prices in effect immediately prior to the adjustment and such adjustment shall be made regardless of what Seller's crude inventory may be at the time of such adjustment.

VI. *Duration of Contract.*

The original term of this contract shall expire at midnight on December 31, 1945. Buyer shall have the option to extend this contract for two (2) successive yearly periods beyond the original term by giving notice in writing to Seller of the exercise of such option at least ninety (90) days prior to the end of the original term for the first yearly extension and at least ninety (90) days prior to the end of the first yearly extension for the second yearly extension. During such extension or extensions all of the provisions of this contract except those not then applicable shall be in full force and effect.

VII. *Advance on Account of Purchase of Gasoline.*

(a) Buyer shall make an advance payment to Seller on account of the purchase of 100-Octane aviation gasoline in the amount of Two Million One Hundred Thousand Dollars ($2,100,000.00) which shall be disbursed in monthly installments as the construction of the expanded facilities progresses. The first installment shall be disbursed in the amount of one-twelfth (1/12th) of said Two Million One Hundred Thousand Dollars ($2,100,000.00) immediately following the expiration of ninety (90) days from the date of this contract or immediately following receipt of notice by Buyer from Seller of Seller's waiver of its right to termi- [fol. 45] nate this contract under Section XVII hereof, which ever event shall first occur. The remaining install-

ments shall be disbursed when Seller shall deliver to Buyer statements, showing only principal items, to certify that it has expended, or firmly committed itself to expend, on account of the construction of the expanded facilities all of the funds theretofore advanced to it by Buyer and in addition has so expended, or firmly committed itself to expend, from its own funds not less than thirty-three and one-third percent (33⅓%) of the aggregate of such installments advanced by Buyer. Buyer shall have the privilege of examining Seller's books to verify said statements, but such verification shall not be a condition of payments by Buyer. If such examination shall lead to any disagreement, it shall be settled by arbitration under Section XI hereof.

(b) From the amount due Seller for deliveries of 100-Octane aviation gasoline for each of the first thirty-six (36) full calendar months following receipt by Buyer of Seller's notification of completion of the expanded facilities referred to in Section I hereof, Buyer shall deduct and retain one thirty-sixth (1/36th) of the sum of:

(1) the above advance payment, and

(2) interest at the rate of two percent (2%) per annum on outstanding balances of such advance payment accruing subsequent to the date of receipt by Buyer of Seller's notification of completion of said expanded facilities;

provided that Buyer shall also deduct and retain, with respect to each of the first twelve (12) full calendar months after the date of receipt of such notification of completion the sum of:

(1) one-twelfth (1/12th) of the amount of interest at the rate of two percent (2%) per annum on the outstanding balances of such advance payment acrued prior to and including the date of receipt by Buyer of Seller's notification of completion of said expanded facilities; and

[fol. 46] (2) one-twelfth (1/12th) of the amount of the credit, if any, referred to in paragraph (c) of this Section VII.

The above deductions shall be considered as payment for the first purchases by Buyer in each of the first thirty-six (36) full calendar months following receipt by Buyer of Seller's notification of completion of said expanded facilities.

(c) If, by reason of delay in the completion of the expanded facilities, the notification of completion referred to in Section II hereof shall not be received at least thirty-six (36) months prior to December 31, 1945, then Seller shall repay to Buyer one thirty-sixth (1/36th) of the principal amount of the advance payment for each month or fraction thereof by which receipt of said notification of completion is delayed after January 1, 1943, such repayment to be credited against any purchases by Buyer of 100-Octane aviation gasoline hereunder delivered during each of the twelve (12) full calendar months following receipt of said notification of completion; provided, however, that not more than one-twelfth (1/12th) of such credit shall be taken in each of said twelve (12) full calendar months; and provided further that any such repayment not made as provided above or in paragraph (d) of this Section VII shall be made by Seller to Buyer in cash on December 31, 1945.

(d) In the event of Seller's failure to deliver sufficient 100-Octane aviation gasoline hereunder following such notification of completion, due to reasons other than the force majeure reasons referred to in Section X hereof, to permit Buyer to recoup in any month the monthly repayment installment as provided in paragraph (b) of this Section VII, the unrecouped portion of the monthly repayment installment as aforesaid shall be repaid immediately by Seller to Buyer in cash; but if such failure was due to such force majeure reason then the repayment period provided in paragraphs (b) and (c) of this Section VII shall be extended one month for each month in which such failure due to such force majeure reason occurred.

[fol. 47] VIII. *Liquidated Damages and Limitation of Liability.*

The parties mutually agree that the Seller would be seriously damaged in the event that Buyer should breach its obligation to take that minimum quantity of 100-Octane

aviation gasoline herein agreed upon and that the liquidated damages herein provided for are not in the nature of a penalty or forfeiture and that they reflect allowance for the possible cessation of war prior to the expiration of the original term of the contract. If Buyer shall fail to purchase sufficient 100-Octane aviation gasoline in any one full calendar month following receipt by Buyer of Seller's notification of completion of said expanded facilities to liquidate the monthly repayment installment (determined as provided in paragraphs (b) and (c) of Section VII hereof), Buyer shall have the privilege to deduct and retain from amounts owing to Seller for purchases of 100-Octane aviation gasoline during the next succeeding month, over and above amounts sufficient to liquidate the regular monthly repayment installment for such month, an amount up to the unrecouped portion of the monthly repayment installment for the preceding month. If Buyer so fails to make recoupment, as aforesaid, during such succeeding month, then Seller shall, upon the expiration of such month, be entitled to retain as liquidated damages such unrecouped amount plus interest at the rate of two percent (2%) per annum on such unrecouped amount computed from the first (1st) day of the preceding month.

It is understood that the foregoing liquidated damages relate solely to a default by Buyer in not purchasing the stipulated quantities. Damages for any other default by Buyer and for any default by Seller shall be determined by Arbitration.

IX. *Deliveries and Inspections.*

(a) Seller warrants full and unencumbered title to all gasoline delivered under this contract. Title to said gasoline, and risk of loss in respect thereof, shall pass from Seller to Buyer upon delivery of the gasoline at the intake pipe of the means of transportation, f. o. b. Seller's refinery at Watson, California.

(b) Buyer shall take delivery of said gasoline in tankers, barges, tank cars, or tank trucks (tank truck deliveries to be not in excess of Seller's capacity for loading tank trucks [fol. 48] and tank car deliveries not to be in excess of two thousand (2,000) barrels in any one day all to be supplied by Buyer at its own cost and expense.

(c) Buyer shall give notice to Seller as far in advance as practicable, and in no case less than forty-eight (48) hours, of the arrival of each tanker or barge and of the quantity of and specifications of the gasoline to be loaded. Seller shall furnish without cost to Buyer berth at which each vessel may safely lie afloat together with all connections and facilities for loading, and shall load the product on board.

Deliveries shall be made in accordance with the delivery conditions at each loading point which currently are in effect with respect to deliveries made at such point to other customers.

(d) Seller shall furnish certificates of inspection, by a licensed inspector satisfactory to the parties which shall set forth the quantity and quality of each shipment of gasoline. Inspection shall be based on samples taken from Seller's storage tanks from which the product is delivered. The certificates of inspection shall be issued in quadruplicate, one set of which shall accompany the relative shipment, one of which shall forthwith be delivered to Buyer, and a third submitted to Buyer with the monthly statement required by Section IV hereof. Buyer may, at its option, waive the requirements of inspection by a licensed inspector, in which event Seller shall furnish its own certificates of inspection, which certificates shall be controlling.

(e) Inspection as to quantity of delivery into vessels shall be made by taking the temperature and measuring and gauging the product in the shore tanks from which delivery is made immediately before and immediately after loading. Inspection as to quantity of delivery into tank cars and tank trucks shall be made in accordance with the accepted practices of the trade. Adjustment in volume to a sixty degree Fahrenheit (60° F.) basis shall be made in accordance with the correction tables of the United States Bureau of Standards prevailing at the time of delivery except in case of deliveries into tank trucks, in which case no adjustment shall be made.

(f) Inspection as to quality shall be made according to the latest standard or tentative standard methods of the [fol. 49] American Society for Testing Materials, wherever applicable, and the product shall conform as to quality with the specifications set forth in Exhibit A hereof.

(g) The cost of product inspection shall be paid by Seller and billed separately to Buyer, which shall pay such cost, except when Seller's inspection is accepted in which case Seller shall assume the cost of its own inspection.

(h) The certificates of inspection of quantity and quality shall be accepted by Buyer and Seller as conclusive for invoice, payment, and all other purposes of this contract.

(i) Should any such certificate indicate a failure of the product shipped to conform completely to the specifications of quality, Buyer may nevertheless accept such product and claim an adjustment for such deficiency; provided, that in the event that such a claim is made Seller shall be notified and given an opportunity to inspect said shipment within five (5) days after arrival at destination but in any event before unloading.

(j) Upon request by Buyer, Seller shall make deliveries of 100-Octane aviation gasoline under this contract in appropriate limited quantities to points where Seller may be currently engaged in making deliveries of aviation gasoline in the ordinary course of its business. The delivery costs shall be paid by Buyer and are to be mutually agreed upon.

(k) Seller shall not be obligated to procure the 100-Octane gasoline to be delivered hereunder from any source other than its Watson, California, refinery.

X. *Force Majeure.*

Seller shall not be liable for delays or defaults in its performance under this contract due to causes beyond its control and without its fault or negligence, including, but not restricted to, acts or requests of the Government, or of any Governmental officer or agent purporting to act under authority, floods, fires, epidemics, quarantine restrictions, strikes, freight embargoes and failures, exhaustion or unavailability, or delays in delivery, of any product, service or material necessary in the expansion of the facilities contemplated by Section I hereof or in the manufacture and delivery of aviation gasoline deliverable hereunder, including crude oil, supplies, raw materials, ingredients and lead tetraethyl.

[fol. 50] XI. *Arbitration.*

In case of any disagreement between Buyer and Seller as to any right, obligation, term, or provisions of this contract, including any disagreement as to the price to be paid for gasoline to be delivered hereunder, the parties shall make an earnest effort to settle such disagreement to their mutual satisfaction. If such effort be unsuccessful, then either party may cause such disagreement to be submitted for determination by arbitrators by giving to the other party a notice in writing or by telegraph to that effect and giving the name of the arbitrator chosen by the party giving the notice. Within five (5) days after receipt of such notice of arbitration, the other party shall, in writing or by telegraph, name the arbitrator chosen by such party, and within five (5) days after the appointment of the second arbitrator, an additional arbitrator shall be selected by the two (2) arbitrators theretofore appointed, provided, however, if one of the parties shall have failed to appoint an arbitrator as hereinbefore provided, the sole arbitrator shall arbitrate the disagreement alone. If two (2) arbitrators shall have been appointed as aforesaid and shall have failed to select an additional arbitrator within the above stated time, the additional arbitrator shall be appointed by the person who at the time is the Senior Judge of the United States Circuit Court of Appeals for the Ninth Circuit, acting in his individual and not judicial capacity, upon application therefore by either of the parties. The decision of a majority of the arbitrators so appointed, or if either party shall have failed to appoint its arbitrator as aforesaid, the decision of the sole arbitrator shall be final and binding on the parties for all purposes. Each party shall pay the cost and expenses of the arbitrator appointed by such party, and the other costs and expenses of the arbitration, including the cost and expenses of the additional arbitrator, shall be paid by the party to the arbitration whose claim is not sustained or if partially sustained the costs shall be apportioned. Pending such determination of every disagreement as to the price to be paid for gasoline delivered hereunder, Buyer shall, upon contesting any price claimed by Seller to be due, pay the price which Buyer alleges to be due and shall immediately upon such determi-

nation pay any balance found by mutual agreement or by said arbitrators to be due.

[fol. 51] XII. *Taxes.*

Buyer shall pay in addition to the prices as established in Sections IV and V hereof, any new or additional taxes, fees, or charges, other than income, excess profits, or corporate franchise taxes, which Seller may be required by any municipal, state, or federal law in the United States or any foreign country to collect or pay by reason of the production, manufacture, sale or delivery of the commodities delivered hereunder. Buyer shall also pay any such taxes on crude petroleum, or the transportation thereof, to the extent such taxes result in increased cost of the commodities delivered hereunder not compensated for by Section V hereof.

Buyer shall also pay in addition to the prices as established in Sections IV and V hereof, any now existing taxes, fees, or charges measured by the volume or sales price of the aviation gasoline delivered hereunder, imposed upon Seller by reason of the production, manufacture, storage, sale or delivery of such gasoline, unless Buyer or Seller is entitled to exemption from a given tax, fee or charge by virtue of Buyer's governmental status; it being understood that Buyer now believes that both Buyer and Seller are entitled to such exemption. Seller represents that the taxes, fees and charges referred to in this paragraph have not been included in its computation of costs on which the prices set forth in Section IV hereof are based.

If in any case the parties cannot agree on the question as to whether or not Buyer or Seller is entitled to exemption from a given tax, fee or charge by virtue of Buyer's governmental status, the burden shall be upon Buyer to obtain a ruling in writing from a duly constituted and authorized governmental tax authority as to such exemption. Until such ruling is obtained Buyer shall pay the amount of the tax to Seller or to the appropriate tax collecting agency or make satisfactory arrangements with such tax collecting agency.

Any addition of taxes to the prices as established in Sections IV and V hereof shall not be considered in arriving

at the value of the gasoline delivered hereunder in connection with those portions of the contract referring to liquidated damages, repayment of advance or recoupment of advance, and such taxes shall be shown separately and be in addition to the price.

[fol. 52] XIII. *Notices.*

Any notice to be given hereunder shall be in writing and may be personally delivered or sent by cable, telegram or registered mail to the party for whom intended at the address of such party as specified above. A notice personally delivered to either party must be personally delivered to an officer or manager thereof. Notice by registered mail shall be deemed to have been given at the expiration of that time after mailing which is normally required by the postal authorities to make delivery. Cabled or telegraphed notice shall be deemed given the day after sending the cable or telegram. Each party shall immediately send to the other by regular mail confirming copies of any notices sent by cable, telegraph or air mail. Either party may by notice as aforesaid change its address for notices thereafter.

XIV. *Entirety of Contract.*

This instrument contains the entire agreement between the parties in respect of the subject matter and there are no conditions, warranties, representations or stipulations relating thereto which are not merged herein. The right of either party to require strict performance shall not be affected by any previous waiver or course of dealing, unless such waiver be in writing signed by an officer or other duly authorized person and specify a duration sufficient in time to embrace the matter in question. No modification shall be binding unless in writing and signed by officers of the parties. Authorization or ratification by the boards of directors of the parties shall not be required in respect of modifications.

XV. *Assignability.*

This contract shall be binding upon, and shall inure to the benefit of, the successors and assigns of the respective parties hereto; provided, however, neither party shall have the

right to assign this contract without the written consent of the other party, except that Buyer may assign to any other governmental Agency, department, instrumentality or wholly government-owned corporation in which event Buyer shall remain liable.

XVI. *Statutory Compliance.*

In carrying out this contract Seller agrees to comply with, and give all stipulations and representations required by applicable Federal laws and further agrees to require [fol. 53] such compliances, representations, others incidental to or in connection with this contract as may be required by applicable Federal laws; and notwithstanding the generality of the foregoing, Seller further agrees that in the performance of this contract it will not discriminate against any worker because of race, creed, color or national origin.

Seller is a corporation and this contract is made with it for its general benefit and no Member of, or Delegate to Congress, or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise therefrom in violation of the law of the United States covering such matters.

XVII. *Right to Terminate.*

Seller shall have the right to terminate this contract within (90) days of the date thereof, unless within said ninety (90) days it shall receive all governmental assistance which is available or necessary for the prompt completion of the expanded facilities which Seller will erect and install hereunder, including, without limitation, priorities and allocations necessary for obtaining materials, equipment, supplies and crude petroleum, and assurances from the Treasury Department, in the form of closing agreements, that the advance payment provided for in Section VIII hereof, or any part thereof, will not be treated as taxable income upon receipt by Seller, but that the ratable portions thereof will be treated as amounts received for products supplied, when and as such ratable portions are credited for that purpose hereunder. Failure so to terminate shall not constitute a waiver of any other rights of Seller.

In witness whereof, the parties hereto have executed this contract as of the date and year first above written.

Defense Supplies Corporation, by H. A. ——, President.

Attest: Dudley H. Diggs, Acting Secretary.

Richfield Oil Corporation, by H. —. ——, Chairman of the Board of Directors.

Attest: Steve B. Banner, Secretary.

[fol. 54] EXHIBIT "A"

Item 1 ..... price, 13.5 cents per gallon, F. O. B. Seller's refinery at Watson, California.

U. S. Army—Navy Supply
AN-VV-F-781, Sept. 26, 1940
Amendment No. 3, June 6, 1941
Knock Test Method, AN-VV-F-746

100-Octane Number by Method AN-VV-F-746

Lead Limit 3.0 cc/Gal.

Item 2 ..... price, 13.25 cents per gallon, F. O. B. Seller's refinery at Watson, California.

U. S. Army—Navy Supply

Same as above with Amendment No. 4, Nov. 24, 1941.

Lead Limit 4.0 cc/Gal.

[fol. 55] Guarantee by Reconstruction Finance Corporation

In consideration of the execution of the within contract and as an inducement to Richfield Oil Corporation to enter into said contract, Reconstruction Finance Corporation does hereby guarantee the full and complete performance of all of the terms and conditions of said contract on the part of Defense Supplies Corporation (a subsidiary of Re-

construction Finance Corporation) to be performed at the time and in the manner therein provided.

In witness whereof, Reconstruction Finance Corporation has caused this Guarantee to be executed by its officers thereunto duly authorized this 3rd day of February, 1942.

Reconstruction Finance Corporation. By Charles B. Henderson, Chairman.

Attest: —— ——, Acting Secretary. (Seal.)

[fol. 56] Defense Supplies—Richfield Contract

(Watson Refinery—Second Contract)

As submitted to and approved by the Board of Directors at meeting held Wednesday, May 12, 1943.

Chas. B. Bauch.

Revised March 23, 1943.

Contract made as of February 20, 1943, between Richfield Oil Corporation, a Delaware Corporation, having its principal business office at 555 South Flower Street, Los Angeles, California, hereinafter called Seller, and Defense Supplies Corporation, a corporation created by Reconstruction Finance Corporation, pursuant to Section 5 (d) of the Reconstruction Finance Corporation Act as amended, having its principal place of business at Washington, D. C., hereinafter called Buyer.

In consideration of the mutual agreements herein contained the parties agree as follows:

A certain contract made as of February 3, 1942, between the parties entitled "Contract between Defense Supplies Corporation and Richfield Oil Corporation" is hereby modified to the extent that it is inconsistent herewith and shall otherwise remain in full force and effect. Said certain contract will be referred to hereinafter as "the prior contract".

I. *Expansion of Seller's Refining Facilities.*

As of the date of the prior contract, Seller had existing facilities for the production at Watson, California, of ap-

proximately one thousand seven hundred (1,700) barrels per calendar day of 100 octane aviation gasoline in accordance with Item 1 of Exhibit A hereof.

Seller has now recently completed an expansion of such facilities contemplated by the prior contract, to an extent which Seller originally estimated would enable it to produce approximately three thousand seven hundred fifty (3,750) barrels per calendar day of 100 octane aviation gasoline in accordance with Item 1 of Exhibit A hereof and which Seller currently estimates will enable it to produce approximately three thousand sixty-five (3,065) barrels per calendar day of 100 octane aviation gasoline in accordance with Item 3 of Exhibit A hereof.

[fol. 57] Seller is willing to make an additional expansion of its facilities at an estimated cost of approximately Fourteen Million Three Hundred Seventy-five Thousand Dollars ($14,375,000.00), which it is estimated will enable Seller to produce at Watson, California, a total of approximately ten thousand two hundred (10,200) barrels per calendar day of 100 octane aviation gasoline in accordance with Item 3 of Exhibit A hereof. Seller shall use its best efforts to expand said additional facilities and shall endeavor to maintain work on said expansion day and night in so far as the requisite labor and materials are available. Seller shall use its best efforts to complete such expansion as soon as possible and not later than March 1, 1944. The force majeure provisions set forth in Section X hereof shall apply in all respects to the expansion of facilities as well as to the sale of gasoline and all other obligations of Seller.

II. *Sale and Storage of Products.*

(a) When the aforesaid additional expansion of Seller's facilities shall be completed and ready for operation, Seller shall promptly notify Buyer; and from and after receipt of such notification Seller shall sell and deliver and Buyer shall buy and receive, in accordance with provisions of this contract, two hundred twenty-five thousand (225,000) barrels per calendar month of 100 octane aviation gasoline which shall be in accordance with the specifications set forth in Exhibit A hereof or any other specification which

by mutual agreement shall be attached as an addendum to Exhibit A.

(b) Wherever in this contract provision is made for the sale and delivery to Buyer of a stated quantity of gasoline such quantity shall be an aggregate quantity of the various kinds of gasoline specified in Exhibit A collectively considered. Buyer may apportion such aggregate quantity among the various kinds of gasoline.

(c) Buyer on giving reasonable notice to Seller may require the delivery hereunder of 100 octane aviation gasoline of specifications other than those originally set forth in Exhibit A hereof which are capable of being produced with the same refining facilities and the same raw materials as are used in producing 100 octane aviation gasoline in accordance with the specifications originally set forth in Exhibit A hereof. The prices, specifications and quantities [fol. 58] of such products shall be determined by negotiation between the parties, and Seller shall not be required to deliver such products unless and until an agreement has been reached. Such agreement shall be reduced to writing as an addendum to Exhibit A hereof.

(d) The term "barrel" as used in this contract means a barrel of forty-two (42) gallons. The term "gallon" means a United States gallon of two hundred and thirty-one (231) cubic inches.

(e) Seller shall maintain storage facilities at, or in the vicinity of, Watson, California, to accommodate at least three hundred thousand (300,000) barrels of 100 octane aviation gasoline. Subject to Section VIII hereof, Buyer shall order and take deliveries in such quantities as it may determine; provided, however, that whenever Seller's above-specified storage facilities for said aviation gasoline shall be filled, Seller shall not be obligated to produce any more of said gasoline for delivery to Buyer hereunder until Buyer shall have substantially reduced by purchase and removal the amount of gasoline in storage. If such full storage condition exists, Seller shall have the right to diminish the quantities otherwise to be delivered to Buyer by an amount equal to the amount of 100 octane aviation gasoline which was produced during such full storage condition. If, however, Seller shall produce during any such

period of full storage any additional 100 octane aviation gasoline of the kind covered by this contract, then such additional aviation gasoline shall be treated as covered by Section III hereof. In accumulating said storage, Seller may store gasoline of the specifications last ordered by Buyer unless Buyer otherwise directs by written notice; and Buyer in ordering deliveries shall first order against the gasoline in storage; provided, however, that on Buyer's request and if Seller can do so without extra cost, Seller shall change the gasoline in storage to meet other specifications covered in Exhibit A hereof.

[fol. 59] III. *Optional Gasoline.*

(a) Buyer shall also have the option from time to time and at any time to purchase all or any part of the 100 Octane aviation gasoline which Seller may produce between the effective date of the notification referred to in Section II (a) hereof and the expiration of this contract. Upon the exercise of such option Seller shall, subject to Section V (c) hereof, operate the facilities at full capacity or at least to an extent sufficient to satisfy Buyer's indicated requirements.

IV. *Price and Payment.*

(a) Prior to the effective date of the notification referred to in Section II (a) hereof, the base price of 100 octane aviation gasoline, specified as Item 2 of Exhibit A hereof, shall be thirteen and one-quarter cents ($0.1325) per gallon f.o.b. Seller's refinery at Watson, California, but said base price shall not apply from and after the effective date of the notification referred to in Section II (a) hereof.

(b) From and after the effective date of the notification referred to in Section II (a) hereof, the base price of 100 octane aviation gasoline in accordance with Item 3 of Exhibit A hereof purchased under the present contract and under the prior contract shall be thirteen and one-half cents ($0.135) per gallon f.o.b. Seller's refinery at Watson, California.

(c) Seller represents that there has not been included in its computation of such prices any allowance for depre-

ciation, amortization and obsolescence in excess of ten per cent (10%) per annum of that portion of the original cost of its existing refining facilities used in the manufacture of said 100 octane aviation gasoline which is properly allocable to such manufacture, plus ten per cent (10%) per annum of that portion of the original estimated cost of its proposed additional refining facilities to be used in the manufacture of said 100 octane aviation gasoline which is properly allocable to such manufacture. Nothing in the preceding sentence shall preclude Seller from using a different rate or rates for tax and accounting purposes.

[fol. 60] (d) Buyer shall pay promptly, but not later than the twentieth (20th) day after the end of each calendar month, all money due for gasoline delivered to it by Seller during said month. On or before the tenth (10th) day of each calendar month, Seller shall render to Buyer a statement setting forth the quantity of aviation gasoline delivered during the preceding month, the price per gallon, and the total amount to be paid therefor. Copies of the certificates of inspection referred to in Section IX hereof shall accompany the aforesaid monthly statements.

V. *Price Escalation*

The base prices of 100 octane aviation gasoline purchased under the present contract and under the prior contract shall be subject to adjustment, first, as provided in Exhibit B hereof, and second, as follows:

(a) The said base prices are based on a price of One Dollar and Eleven Cents ($1.11) per barrel for twenty-six degree (26°) A.P.I. Signal Hill crude deliverable to Seller in the Signal Hill Field. The said prices shall be increased or decreased by a percentage equal to one-half the percentage increase or decrease in the average price paid for such crude over or under One Dollar and Eleven Cents ($1.11) per barrel by the three (3) largest purchasers of such crude in the Signal Hill Field. The prices posted for such crude in the Signal Hill Field should constitute prima facie evidence of the prices said by such purchasers.

(b) The base price for 100 octane aviation gasoline set forth in Section IV (a) hereof shall also be increased or decreased by a percentage equal to one-half the percentage

increase or decrease in the final monthly wholesale price Index Number for "All Commodities other than Farm Products and Foods," as now published by the Bureau of Labor Statistics. United States Department of Labor, over or under the index figure of ninety-three and five-tenths (93.5) (the final index number used in the prior contract). The effective date of a change in price due to a change in the index number shall be the date of publication by the Bureau of Labor Statistics of the latest final monthly index number. If said index shall cease to be issued, the [fol. 61] parties shall use such other index as may most closely approximate the discontinued one, and if they shall be unable to agree within ten (10) days after notice of such discontinuance as to the index to be substituted, the determination of the new index shall be made by arbitration under Section XI hereof.

(c) The base price for 100 octane aviation gasoline set forth in Section IV (b) hereof shall also be increased or decreased by a percentage equal to one-half the percentage increase or decrease over or under a calculated index figure which is the weighted average of three thousand sixty-five (3,065) barrels per calendar day at ninety-three and five-tenths (93.5) and seven thousand one hundred thirty-five barrels per calendar day at ninety-five and eight-tenths (95.8) (the present final index number). The effective date of a change in price due to a change in the index number shall be the date of publication by the Bureau of Labor Statistics of the latest final monthly index number.

(d) The prices hereinabove set forth are based upon present normal methods of transporting petroleum raw materials to Seller's refinery at Watson, California, and upon a normal operation of that refinery, in which substantial quantities of motor fuel and other products must necessarily be produced and sold in connection with the production of 100 octane aviation gasoline. If it becomes necessary to transport petroleum raw materials to said refinery by other than present normal methods thereby incurring additional costs of transportation, or if through an abnormal reduction of available markets for motor fuel and petroleum products other than 100 octane aviation gasoline, or if by reason of any cause or condition (whether or not

of the same class or kind) resulting directly or indirectly from the existence of a state of war, the normal functioning of any refinery at which any portion of the 100 octane aviation gasoline supplied hereunder is manufactured shall be interfered with to such an extent that in the opinion of Seller the cost of refining 100 octane aviation gasoline is increased in respects other than those corrected by adjustment of the base price under the above paragraphs (a) (b), and (c), Seller may give notice to Buyer that the delivery of [fol. 62] 100 octane aviation gasoline will be reduced in an amount sufficient in the judgment of Seller to offset the added cost of refining unless Buyer shall agree with Seller to increase the price paid for 100 octane aviation gasoline by an amount sufficient to offset such increased cost. If within ten (10) days after the date of mailing such notice Buyer advises Seller that it does not elect to take such reduced output and Buyer and Seller are unable to agree upon the amount of such increase in price within ten (10) days thereafter, Buyer may give notice to Seller that it desires to have the amount of such increase fixed by arbitration in accordance with Section XI hereof. The arbitrators to be chosen in this instance shall be persons who have had at least ten (10) years' experience in the petroleum business and who are not connected with either of the parties hereto. The arbitrators shall be directed to make their findings as to the amount and effective date of such price increase within fifteen (15) days after the appointment of the last-appointed arbitrator and if no decision is reached by the arbitrators within such period, the production of 100 octane aviation gasoline by the refinery affected may be reduced as above provided.

(e) In making adjustments under this Section V, the prices to be adjusted shall be those prices in effect immediately prior to the adjustment and such adjustment shall be made regardless of what Seller's crude inventory may be at the time of such adjustment.

VI. *Duration of Contract*

The original term of this contract shall expire at midnight on the last day of the last of thirty-six (36) consecutive calendar months after the effective date of the notifica-

tion referred to in Section II (a) hereof, but not later, in any event, than June 30, 1947. Buyer shall have the option to extend this contract for two (2) successive yearly periods beyond the original term by giving notice in writing to Seller of the exercise of such option at least ninety (90) days prior to the end of the original term for the first yearly extension and at least ninety (90) days prior to the end of [fol. 63] the first yearly extension for the second yearly extension. Upon such extension the obligations to purchase and receive and the prices to be paid shall be fixed by agreement between the parties hereto during the ninety (90) day period prior to each such extension. All of the other provisions of this contract except those not then applicable shall be in full force and effect. Section VI of the prior contract is hereby superseded and cancelled, except for the first sentence thereof.

VII. *Advance on Account of Purchase of Gasoline*

(a) In addition to the advance payment provided for in the prior contract, Buyer shall make an advance payment to Seller on account of the purchase of 100 octane aviation gasoline under this contract in the amount of Ten Million Seven Hundred Eighty-one Thousand Two Hundred Forty-four Dollars ($10,781,244.00) which shall be disbursed in monthly installments as the construction of the expanded facilities progresses. The first installment shall be disbursed in the amount of one-twelfth (1/12th) of said Ten Million Seven Hundred Eighty-one Thousand Two Hundred Forty-four Dollars ($10,781,244.00) immediately following the expiration of ninety (90) days from the date of this contract or immediately following receipt of notice by Buyer from Seller of Seller's waiver of its right to terminate this contract under Section XVII hereof, whichever event shall first occur. The remaining installments shall be disbursed when Seller shall deliver to Buyer statements, showing only principal items, to certify that it has expended, or firmly committed itself to expend, on account of the construction of the additional expansion of facilities referred to in Section I hereof all of the funds theretofore advanced to it by Buyer and in addition has so expended, or firmly committed itself to expend, from its own funds not less than thirty-three and one-third percent (33⅓%) of the aggre-

gate of such installments advanced by Buyer. Buyer shall have the privilege of examining Seller's books to verify said statements, but such verification shall not be a condition of payments by Buyer. If such examination shall lead to any disagreement, it shall be settled by arbitration under Section XI hereof.

[fol. 64] (b) From the amount due Seller for deliveries of 100 octane aviation gasoline for each of the first thirty-six (36) full calendar months following receipt by Buyer of Seller's notification of completion of the additional expansion of facilities referred to in Section I hereof, Buyer shall deduct and retain the sum of:

(1) one thirty-sixth (1/36th) of the above advance payment, and

(2) interest at the rate of two percent (2%) per annum on outstanding balances of such advance payment accruing subsequent to the date of receipt by Buyer of Seller's notification of completion of said additional expansion of facilities;

provided that Buyer shall also deduct and retain, with respect to each of the first twelve (12) full calendar months after the date of receipt of such notification of completion the sum of:

(1) one-twelfth (1/12th) of the amount of interest at the rate of two percent (2%) per annum on the outstanding balances of such advance payment accrued prior to and including the date of receipt by Buyer of Seller's notification of completion of said additional expansion of facilities; and

(2) one-twelfth (1/12th) of the amount of the credit, if any, referred to in paragraph (c) of this Section VII.

The above deductions, plus the deductions under the provisions of Section VII of the prior contract accruing subsequent to the effective date referred to in Section II (a) hereof, shall be considered as payment for the first purchases by Buyer in each of the first thirty-six (36) full calendar months following the effective date of the notification referred to in Section II (a) hereof.

(c) If, by reason of delay in the completion of the expanded facilities, the effective date of the notification referred to in Section II (a) hereof shall not be at least thirty-six (36) months prior to June 30, 1947, then Seller shall [fol. 65] repay to Buyer one thirty-sixth (1/36th) of the principal amount of the advance payment for each month or fraction thereof by which the effective date of said notification is subsequent to July 1, 1944, such repayment to be credited against any purchases by Buyer of 100 Octane aviation gasoline hereunder delivered during each of the twelve (12) full calendar months following the effective date of said notification; provided, however, that not more than one-twelfth (1/12th) of such credit shall be taken in each of said twelve (12) full calendar months; and provided further that any such repayment not made as provided above or in paragraph (d) of this Section VII shall be made by Seller to Buyer in cash on expiration of the original term of this contract.

(d) In the event of Seller's failure to deliver sufficient 100 octane aviation gasoline hereunder following the effective date of the notification referred to in Section II (a) hereof, due to reasons other than the force majeure reasons referred to in Section X hereof, to permit Buyer to recoup in any month the monthly repayment installment as provided in paragraph (b) of this Section VII, the unrecouped portion of the monthly repayment installment as aforesaid shall be repaid immediately by Seller to Buyer in cash; but if such failure was due to such force majeure reason then the repayment period provided in paragraphs (b) and (c) of this Section VII shall be extended one month for each month in which such failure due to such force majeure reason occurred.

VIII. *Liquidated Damages and Limitation of Liability.*

(a) The parties mutually agree that the Seller would be seriously damaged in the event that Buyer should breach its obligation to take that minimum quantity of 100 octane aviation gasoline herein agreed upon and that the liquidated damages herein provided for are not in the nature of a penalty or forfeiture and that they reflect allowance for the possible cessation of war prior to the expiration of the

original term of the contract. If Buyer shall fail to purchase sufficient 100 octane aviation gasoline in any one full calendar month following the effective date of the notification referred to in Section II (a) hereof to liquidate the total of [fol. 66] the monthly repayment installments under this contract and the prior contract (determined as provided in paragraphs (b) and (c) of Section VII hereof and in paragraphs (b) and (c) of Section VII of the prior contract), Buyer shall have the privilege to deduct and retain from amounts owing to Seller for purchases of 100 octane aviation gasoline during the next succeeding month, over and above amounts sufficient to liquidate the regular monthly repayment installments for such month, an amount up to the unrecouped portion of the monthly repayment installments for the preceding month. If Buyer so fails to make recoupment, as aforesaid, during such succeeding month, then Seller shall, upon the expiration of such month, be entitled to retain as liquidated damages such unrecouped amount plus interest at the rate of two percent (2%) per annum on such unrecouped amount computed from the first (1st) day of the preceding month.

(b) The foregoing liquidated damages and the liquidated damages provided in Section VIII of the prior contract relate solely to a default by Buyer in not purchasing the stipulated quantities and there shall be no other damages for any failure by Buyer to take the quantities stipulated in Section II (a) of the prior contract and Section II (a) of the present contract. Damages for any other default by Buyer and for any default by Seller shall be determined by arbitration under Section XI hereof.

IX. *Deliveries and Inspections.*

(a) Seller warrants full and unencumbered title to all gasoline delivered under this contract. Title to said gasoline, and risk of loss in respect thereof, shall pass from Seller to Buyer upon delivery of the gasoline at the intake pipe of the means of transportation, f.o.b. Seller's refinery at Watson, California.

(b) Buyer shall take delivery of said gasoline in tankers, barges, tank cars, or tank trucks (tank truck deliveries to be not in excess of Seller's capacity for loading tank trucks

and tank car deliveries not to be in excess of two thousand (2,000) barrels in any one day) all to be supplied by Buyer at its own cost and expense.

[fol. 67] (c) Buyer shall give notice to Seller as far in advance as practicable, and in no case less than forty-eight (48) hours, of the arrival of each tanker or barge and of the quantity of and specifications of the gasoline to be loaded. Seller shall furnish without cost to Buyer berth at which each vessel may safely lie afloat together with all connections and facilities for loading, and shall load the product on board. Deliveries shall be made in accordance with the delivery conditions at each loading point which currently are in effect with respect to deliveries made at such point to other customers.

(d) Seller shall furnish certificates of inspection, by a licensed inspector satisfactory to the parties which shall set forth the quantity and quality of each shipment of gasoline. Inspection shall be based on samples taken from Seller's storage tanks from which the product is delivered. The certificates of inspection shall be issued in five counterparts, one set of which shall accompany the relative shipment, one of which shall be forwarded forthwith to Buyer, a third submitted to Buyer with the monthly statement required by Section IV hereof, a fourth set of which shall be delivered forthwith to Seller, and a fifth set of which shall be delivered forthwith to the authorized officer or employee of the War Department or Navy Department referred to in paragraph (1) of this Section IX. Buyer may, at its option, waive the requirements of inspection by a licensed inspector, and in such event, and in case of shipments made from points (other than refineries) where no licensed inspector is available, Seller shall furnish its own certificates of inspection, which certificates shall be controlling.

(e) Inspection as to quantity of delivery into vessels shall be made by taking the temperature and measuring and gauging the product in the shore tanks from which delivery is made immediately before and immediately after loading. Inspection as to quantity of delivery into tank cars and tank trucks shall be made in accordance with the accepted practices of the trade. Adjustment in volume to a sixty degree Fahrenheit (60°F.) basis shall be made in accordance with

[fol. 68] the correction tables of the United States Bureau of Standards prevailing at the time of delivery except in case of deliveries of quantities less than four thousand (4,000) gallons into tank wagons, in which case no adjustment shall be made.

(f) Inspection as to quality shall be made according to the latest standard or tentative standard methods of the American Society for Testing Materials, wherever applicable, and the product shall conform as to quality with the specifications sef forth in Exhibit A hereof.

(g) The cost of product inspection shall be paid by Seller and billed separately to Buyer, which shall pay such cost, except when Seller's inspection is accepted in which case Seller shall assume the cost of its own inspection.

(h) The certificates of inspection of quantity and quality shall be accepted by Buyer and Seller as conclusive for invoice, payment, and all other purposes of this contract.

(i) Should any such certificate indicate a failure of the product shipped to conform completely to the specifications of quality, Buyer may neverth-less accept such product and claim an adjustment for such deficiency; provided, that in the event that such a claim is made Seller shall be notified and given an opportunity to inspect said shipment within five (5) days after arrival at destination but in any event before unloading.

(j) Upon request by Buyer, Seller shall make deliveries of 100 octane aviation gasoline under this contract in appropriate limited quantities to points where Seller may be currently engaged in making deliveries of aviation gasoline in the ordinary course of its business. The delivery costs shall be paid by Buyer and are to be mutually agreed upon.

(k) Seller shall not be obligated to procure the 100 octane gasoline to be delivered hereunder from any source other than its Watson, California, refinery.

(1) Until further notice from Buyer to Seller, for the purposes of this Section IX any officer or employee of the War Department or Navy Department who is properly authorized to accept deliveries of gasoline for his Department is hereby nominated as agent for Buyer and authorized [fol. 69] to take delivery of aviation gasoline hereunder, to waive the aforesaid requirements of inspection by a licensed

inspector, and to receipt on behalf of Buyer, in a manner approved by Buyer, for deliveries of such aviation gasoline from Seller to Buyer.

X. *Force Majeure.*

Seller shall not be liable for delays or defaults in its performance under this contract due to causes beyond its control and without its fault or negligence, including, but not restricted to, acts or requests of the Government, or of any Governmental officer or agent purporting to act under authority, floods, fires, epidemics, quarantine restrictions, strikes, freight embargoes and failures, exhaustion or unavailability, or delays in delivery, of any product, service or material necessary in the expansion of the facilities contemplated by Section I hereof or in the manufacture and delivery of aviation gasoline deliverable hereunder, including crude oil, supplies, raw materials, ingredients and lead tetraethyl.

XI. *Arbitration.*

In case of any disagreement between Buyer and Seller as to any right, obligation, term, or provisions of this contract, including any disagreement as to the price to be paid for gasoline to be delivered hereunder, the parties shall make an earnest effort to settle such disagreement to their mutual satisfaction. If such effort be unsuccessful, then either party may cause such disagreement to be submitted for determination by arbitrators by giving to the other party a notice in writing or by telegraph to that effect and giving the name of the arbitrator chosen by the party giving the notice. Within five (5) days after receipt of such notice of arbitration, the other party shall, in writing or by telegraph, name the arbitrator chosen by such party, and within five (5) days after the appointment of the second arbitrator, an additional arbitrator shall be selected by the two (2) arbitrators theretofore appointed, provided, however, if one of the parties shall have failed to appoint an arbitrator as hereinbefore provided, the sole arbitrator shall arbitrate the disagreement alone. If two (2) arbitrators shall have been appointed as aforesaid and shall have failed to select an additional arbitrator within the above stated time, the

additional arbitrator shall be appointed by the person who at the time is the Senior Judge of the United States Circuit [fol. 70] Court of Appeals for the Ninth Circuit, acting in his individual and not judicial capacity, upon application therefore by either of the parties. The decision of a majority of the arbitrators so appointed, or if either party shall have failed to appoint -is arbitrator as aforesaid, the decision of the sole arbitrator shall be final and binding on the parties for all purposes. Each party shall pay the cost and expenses of the arbitrator appointed by such party, and the other costs and expenses of the arbitration, including the cost and expenses of the additional arbitrator, shall be paid by the party to the arbitration whose claim is not sustained or if partially sustained the costs shall be apportioned. Pending such determination of every disagreement as to the price to be paid for gasoline delivered hereunder, Buyer shall, upon contesting any price claimed by Seller to be due, pay the price which Buyer alleges to be due and shall immediately upon such determination pay any balance found by mutual agreement or by said arbitrators to be due.

XII. *Taxes.*

(a) Buyer shall pay in addition to the prices as established in Sections IV and V hereof, any new or additional taxes, fees, or charges, other than income, excess profits, or corporate franchise taxes, which Seller may be required by any municipal, state, or federal law in the United States or any foreign country to collect or pay by reason of the production, manufacture, sale or delivery of the commodities delivered hereunder. Buyer shall also pay any such taxes on crude petroleum, or the transportation thereof, to the extent such taxes result in increased cost of the commodities delivered hereunder not compensated for by Section V hereof.

(b) Buyer shall also pay in addition to the prices as established in Section IV and V hereof, any now existing taxes, fees, or charges measured by the volume or sales price of the aviation gasoline delivered hereunder, imposed upon Seller by reason of the production, manufacture, storage, sale or delivery of such gasoline, unless Buyer or Seller is entitled to exemption from a given tax, fee or

charge by virtue of Buyer's governmental status; it being understood that Buyer now believes that both Buyer and Seller are entitled to such exemption. Seller represents that the taxes, fees and charges referred to in this paragraph have not been included in its computation of costs on which the prices set forth in Section IV hereof are based.

[fol. 71] (c) If in any case the parties cannot agree on the question as to whether or not Buyer or Seller is entitled to exemption from a given tax, fee or charge by virtue of Buyer's governmental status, the burden shall be upon Buyer to obtain a ruling in writing from a duly constituted and authorized governmental tax authority as to such exemption. Until such ruling is obtained Buyer shall pay the amount of the tax to Seller or to the appropriate tax collecting agency or make satisfactory arrangements with such tax collecting agency.

(d) Any addition of taxes to the prices as established in Sections IV and V hereof shall not be considered in arriving at the value of the gasoline delivered hereunder in connection with those portions of the contract referring to liquidated damages, repayment of advance or recoupment of advance, and such taxes shall be shown separately and be in addition to the price.

XIII. *Notices.*

Any notice to be given hereunder shall be in writing and may be personally delivered or sent by cable, telegram or registered mail to the party for whom intended at the address of such party as specified above. A notice personally delivered to either party must be personally delivered to an officer or manager thereof. Notice by registered mail shall be deemed to have been given at the expiration of that time after mailing which is normally required by the postal authorities to make delivery. Cabled or telegraphed notice shall be deemed given the day after sending the cable or telegram. Each party shall immediately send to the other by regular mail confirming copies of any notices sent by cable, telegraph or air mail. Either party may by notice as aforesaid change its address for notices thereafter.

XIV. *Entirety of Contract.*

This instrument contains the entire agreement between the parties in respect of the subject matter and there are no conditions, warranties, representations or stipulations relating thereto which are not merged herein. The right of either party to require strict performance shall not be affected by any previous waiver or course of dealing, unless such waiver be in writing signed by an officer or other duly authorized person and specify a duration sufficient [fol. 72] in time to embrace the matter in question. No modification shall be binding unless in writing and signed by officers of the parties. Authorization or ratification by the boards of directors of the parties shall not be required in respect of modifications.

XV. *Assignability.*

This contract shall be binding upon, and shall inure to the benefit of, the successors and assigns of the respective parties hereto; provided, however, neither party shall have the right to assign this contract without the written consent of the other party, except that Buyer may assign to any other governmental Agency, department, instrumentality or wholly government-owned corporation in which event Buyer shall remain liable.

XVI. *Statutory Compliance.*

(a) In carrying out this contract Seller agrees to comply with, and give all stipulations and representations required by applicable Federal laws and further agrees to require such compliances, representations, and stipulations with respect to any contract entered into by it with others incidental to or in connection with this contract as may be required by applicable Federal laws; and notwithstanding the generality of the foregoing, Seller further agrees that in the performance of this contract it will not discriminate against any worker because of race, creed, color or national origin.

(b) Seller is a corporation and this contract is made with it for its general benefit and no Member of, or Delegate to Congress, or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that

may arise therefrom in violation of the law of the United States covering such matters.

XVII. *Right to Terminate.*

Seller shall have the right to terminate this contract within ninety (90) days of the date thereof, unless within said ninety (90) days it shall receive all governmental assistance which is available or necessary for the prompt completion of the expanded facilities which Seller will [fol. 73] erect and install hereunder, including, without limitation, priorities and allocations necessary for obtaining materials, equipment, supplies and crude petroleum, and assurances from the Treasury Department, in the form of closing agreements, that the advance payment provided for in Section VII hereof, or any part thereof, will not be treated as taxable income upon receipt by Seller, but that the ratable portions thereof will be treated as amounts received for products supplied, when and as such ratable portions are credited for that purpose hereunder. Failure so to terminate shall not constitute a waiver of any other rights of Seller.

In Witness Whereof, the parties hereto have executed this contract as of the date and year first above written.

Defense Supplies Corporation, by (Signature illegible), President.

Attest: (Signature illegible), Secretary.

Richfield Oil Corporation, by Chas. S. Jones, President.

Attest: Steve B. Banner, Secretary.

[fol. 74] EXHIBIT "A"

Item 1.

U. S. Army—Navy Supply

AN-VV-F-781	Sept. 26, 1940
Amendment No. 3	June 6, 1941
Knock Test Method	AN-VV-F-746

100 Octane Number by Method AN-VV-F-746
Tetraethyl Lead Limit 3.0 cc/Gal.

Item 2.

U. S. Army—Navy Supply

AN-VV-F-781	Sept. 26, 1940
Amendment No. 4	Nov. 24, 1941
Knock Test Method	AN-VV-F-746

100 Octane Number by Method AN-VV-F-746
Tetraethyl Lead Limit 4.0 cc/Gal.

Item 3.

U. S. Army—Navy Supply

ANF-28	Dec. 23, 1942

100 Octane Number by Method AN-VV-F-746, or 99 Octane Number by Method ASTM-D-357-41T S $\pm$ 1.25 cc. tetraethyl lead by Method AN-VV-F-748 Tetraethyl Lead Limit 4.0 cc/Gal.

[fol. 75] EXHIBIT B

I. (A). Seller represents that the base price set forth in Section IV (b) of the foregoing contract for 100 octane aviation gasoline includes a certain "catalytic cracking royalty sum" representing patent royalties which Seller expects to pay to a third party or parties; that said "catalytic cracking royalty sum" is calculated at a running

royalty rate of $0.05 per barrel of fresh stock charged to Seller's catalytic cracking operation, and is as follows:

	Item 3
Period before date of Seller's notification referred to in Section II (a) of the foregoing contract	none
Period after date of Seller's notification referred to in Section II (a) of the foregoing contract	$0.00132

I. (B). In the event that at any time during the term of the foregoing contract, there shall issue to any third party a patent license covering catalytic cracking operations of the type employed by Refiner, at a running royalty rate lower than $0.05 per barrel of fresh stock charged to said third party's catalytic cracking operation, then as between Buyer and Seller, the first receiving such information shall notify the other, and the base prices of all aviation gasoline thereafter delivered under the foregoing contract shall be adjusted by subtracting from such base price, an amount equal to said "catalytic cracking royalty sum" multiplied by a factor equal to $\frac{A}{B}$, where A equals the difference between $0.05 and said lower running royalty rate payable by said third party, and B equals the sum of $0.05; and Seller shall within sixty (60) days after the date of said notification by Buyer or Seller to the other, refund to Buyer an amount equal to the total number of gallons of 100 octane aviation gasoline delivered under the foregoing contract, between the date of such running royalty rate becomes payable by said third party and said date of notification, multiplied by (a) the amount of said "catalytic cracking royalty sum" and (b) by said factor $\frac{A}{B}$.

[fol. 76] I. (C). In the event that during the term of the foregoing contract Seller does not pay to any third party or parties the "catalytic cracking royalty sum" aforesaid, or any part thereof, then within sixty (60) days following the date of termination, cancellation or expiration of the foregoing contract, Seller shall refund to Buyer an amount

of money equal to the total number of gallons of 100 octane aviation gasoline sold to Buyer under the foregoing contract at a price including said "catalytic cracking royalty sum", multiplied by said "catalytic cracking royalty sum".

I. (D). In the event that at any time during the term of the foregoing contract, it shall be finally determined that Seller will not be required to pay said "catalytic cracking royalty sum" then Seller shall promptly notify Buyer and the base price of all aviation gasoline thereafter delivered under the foregoing contract shall be adjusted by subtracting from said base price an amount equal to said "catalytic cracking royalty sum"; and Seller shall within sixty (60) days after the date of said notification refund to Buyer an amount equal to the total number of gallons of 100 octane aviation gasoline sold to Buyer under the foregoing contract at a price including said "catalytic cracking royalty sum", multiplied by said "catalytic cracking royalty sum".

II. (A). Seller further represents:

(1) That the base prices for 100 octane aviation gasoline set forth in Section IV of the foregoing contract also include certain "contingent sums", as follows:

	Item 2	*Item 3*
Period before the effective date of the notification referred to in Section II (a) of the foregoing contract	$0.00113	$0.00155
Period after the effective date of the notification referred to in Section II (a) of the foregoing contract	$0.00096	$0.00096

(2) That said "contingent sums" represent patent royalties which Seller may or may not be obligated to pay to third parties with respect to the manufacture of cer- [fol. 77] tain "alkylate" constituents of aviation gasoline covered by the foregoing contract, according to a certain process to be employed by Seller. Said "contingent sums" have been calculated at the rate of $0.15 per barrel of total alkylate included in said aviation gasoline.

(3) That said "contingent sums" include the following "prepaid sums" as follows:

	Period before the effective date of the notification referred to in Section II (a) of the foregoing contract.		Period after the effective date of the notification referred to in Section II (a) of the foregoing contract.	
	Item 2	Item 3	Item 2	Item 3
Prior to July 1, 1943	$0.00047	$0.00064	$0.00019	$0.00019
From July 1, 1943 to November 16, 1944	0.00038	0.00052	0.00016	0.00016
On and after November 16, 1944	0.00023	0.00031	0.00009	0.00009

(4) That said "prepaid sums" represent certain sums of money which have heretofore been paid on behalf of Selier for licenses under certain alkylation patent rights of Universal Oil Products Company and Stratford Engineering Corporation. Said "prepaid sums" have been calculated upon the basis of 1,330 barrels of total alkylate at the rate of $0.062 per barrel of total alkylate manufactured prior to July 1, 1943, $0.050 per barrel of total alkylate manufactured from July 1, 1943 to November 16, 1944, and $0.030 per barrel of total alkylate manufactured after November 16, 1944.

II. (B). If, at any time, prior to one year after the termination of the Present Emergency, Seller shall in good faith become obligated to pay patent royalties to third parties having an established sulfuric acid alkylation patent licensing position at rates lower than those set forth hereinabove, Seller shall so advise Buyer, and the base prices of all aviation gasoline, if any, delivered under the foregoing contract after the date Seller becomes so obligated shall be adjusted by subtracting from each of the base prices set forth in Section IV of the foregoing contract, an amount equal to the respective "contingent sum" [fol. 78] applicable thereto, minus the respective "prepaid sum" applicable thereto, multiplied by a factor equal to $\frac{C}{D}$, where C equals the difference between $0.15 and the rate which Seller becomes obligated to pay to said third parties, and D equals $0.15, and Seller shall, within sixty (60) days after becoming so obligated, refund to Buyer an amount equal to the total number of gallons of aviation gasoline

delivered under the foregoing contract prior to the date Seller becomes so obligated under each base price, multiplied (a) by an amount equal to the respective "contingent sum" applicable to the said base price and (b) by said factor $\frac{C}{D}$.

II. (C). If any suit for infringement with respect to said "alkylate" constituents or the manufacture thereof is pending against Seller at the expiration of one year after the termination of the Present Emergency, no refund shall be made by Seller until final adjudication or settlement of such suit in good faith, but within sixty (60) days after such final adjudication or settlement, if the same establishes an obligation on the part of Seller to pay damages or other moneys at a rate lower than the royalty rate set forth hereinabove, Seller shall refund to Buyer an amount equal to the total number of gallons of aviation gasoline sold to Buyer under the foregoing contract under each base price multiplied (a) by the difference between the respective "contingent sum" and the respective "prepaid sum" and (b) by a factor equal to $\frac{E}{F}$, where E equals the difference between $0.15, and the rate which Seller becomes obligated to pay under such final adjudication or settlement, and F equals $0.15, it being expressly understood that Seller's said obligation, as the term is used herein, shall not include any expenses of settlement (as distinguished from actual payments to the party or parties with whom settlement is made) or costs of litigation.

II. (D). In the event that no suit for infringement is brought against Seller and Seller itself undertakes no obligation to pay any patent royalties to others with respect to said "alkylate" constituents or the manufacture thereof, prior to the expiration of one year after the termination of the Present Emergency, Seller shall, within sixty (60) days after the expiration of said one-year period, [fol. 79] refund to Buyer an amount equal to the total number of gallons of aviation gasoline sold to Buyer under this contract at each base price multiplied by a factor equal to G-H, where G equals the respective "contingent sum" applicable thereto, and H equals the respective "prepaid sum" applicable to said base price.

II. (E). In the event that at any time during the term of the foregoing contract, it shall be finally determined that Seller will not be required to pay said "contingent sums", then Seller shall promptly notify Buyer and within sixty (60) days after the date of such notification, Seller shall refund to Buyer an amount of money equal to the total number of gallons of 100 octane aviation gasoline so sold to Buyer under the foregoing contract at each base price multiplied by the factor G-H applicable to said base price.

II. (F). In no event shall the combined amounts of all the said "prepaid sums" which may be deducted from said "contingent sums" establishing the amounts of the refunds set forth in Sections II (B), II (C), II (D), and II (E) hereof exceed the total sum of Sixty Four Thousand Eight Hundred Dollars ($64,800) for the periods of the foregoing contract and the prior contract and any extensions thereof.

II. (G). In determining the effect of this Section II of this Exhibit B with respect to any obligation on the part of Seller to pay royalty on a paid-up or commuted basis, such royalty shall be considered as amortized at a rate not to exceed 10% per annum, or at such other rate as shall be determined by negotiations between the parties at the time the payment of such royalty on a paid-up or commuted basis is projected. In the event the parties fail to agree upon a mutually satisfactory rate of amortization, the question shall be determined by arbitration in accordance with Section XI of the foregoing contract.

II. (H). In determining the effect of this Section II of this Exhibit B with respect to any payment by Seller for past infringement, only that portion of such payment shall be considered which is ratably attributable to aviation gasoline sold under the foregoing contract.

[fol. 80] III. (A). Seller represents that the base prices for 100 octane aviation gasoline set forth in Section IV of the foregoing contract include certain "isomerization royalty sums" representing patent royalties which Seller expects to pay to a third party or parties; that said "isomerization royalty sums" are calculated at a running royalty rate of $0.05 per barrel of isomerized product from

Seller's catalytic isomerization operation, and are as follows:

	Item 2	*Item 3*
Period before the effective date of the notification referred to in Section II (a) of the foregoing contract	$0.00012	$0.00017
Period after the effective date of the notification referred to in Section II (a) of the foregoing contract	$0.00008	$0.00008

III. (B). In the event that at any time during the term of the foregoing contract, there shall issue to any third party a patent license covering catalytic isomerization operations of the type employed by Seller, at a running royalty rate lower than $0.05 per barrel of isomerized product from third party's catalytic isomerization operation, then as between Buyer and Seller, the first receiving such information shall notify the other, and the base prices of all aviation gasoline thereafter delivered under the foregoing contract shall be adjudged by substracting from each of the said base prices, an amount equal to the "catalytic isomerization royalty sum" applicable thereto multiplied by a factor equal to $\frac{J}{K}$, where J equals the difference between $0.05 and said lower running royalty rate payable by said third party, and K equals the sum of $0.05; and Seller shall within sixty (60) days after the date of said notification by Buyer or Seller to the other, refund to Buyer an amount equal to the total number of gallons of 100 octane aviation gasoline delivered under the foregoing contract, between the date such running royalty rate becomes payable by said third party and said date of notification, multiplied by (a) the amount of the "catalytic isomerization royalty sum" and (b) by said factor $\frac{J}{K}$.

[fol. 81] III. (C). In the event that during the term of the foregoing contract Seller does not pay to any third party or parties the "catalytic isomerization royalty sum" aforesaid, or any part thereof, then within sixty (60) days

following the date of termination, cancellation or expiration of the foregoing contract, Seller shall refund to Buyer an amount of money equal to the number of gallons of 100 octane aviation gasoline sold to Buyer under the foregoing contract at a price including said "catalytic isomerization royalty sum", multiplied by said "catalytic isomerization royalty sum".

III. (D). In the event that at any time during the term of the foregoing contract, it shall be finally determined that Seller will not be required to pay said "catalytic isomerization royalty sum" then Seller shall promptly notify Buyer and the base price of all aviation gasoline thereafter delivered under the foregoing contract shall be adjusted by subtracting from said base price an amount equal to said "catalytic isomerization royalty sum"; and Seller shall within sixty (60) days after the date of said notification refund to Buyer an amount equal to the total number of gallons of 100 octane aviation gasoline sold to Buyer under the foregoing contract at a price including said "catalytic isomerization royalty sum", multiplied by said "catalytic isomerization royalty sum".

IV. (A). In the event that Seller make refunds to Buyer in accordance with the provisions of Sections I (C), II (D) and III (C) hereof, and in the event that at any time within six (6) years after the termination of the Present Emergency a suit or suits for infringement with respect to said "alkylate" constituents or the manufacture thereof, or with respect to said catalytic isomerization operations, shall be brought against Seller and such suit or suits shall result in final adjudication or settlement which shall establish an obligation on the part of Seller to pay damages or other moneys in satisfaction thereof, Buyer shall repay to Seller from the particular refund applicable in each case a sum of money, which shall in no event exceed the total amount [fol. 82] of that refund, for the payment solely of said damages or other moneys applicable to that case, it being expressly understood that Seller's said obligation, as the term is used herein, shall not include any expenses of settlement (as distinguished from actual payments to the party or parties with whom settlement is made) or costs of litigation; provided, however, that with respect to such

settlement, no repayment shall be made by Buyer unless Buyer shall first have given in writing its approval to such settlement.

IV. (B.) With respect to such suit or suits for infringement referred to in Section IV. (A) hereof, Seller agrees that it will defend, with all due diligence and at its own expense, such suit or suits at least until an adjudication shall have been made therein by a court of record having primary jurisdiction thereof, or until a settlement approved by Buyer, as above provided, has been effected. Seller further agrees to notify Buyer promptly of the institution of each suit and shall permit Buyer at its own election, to be represented therein by counsel of its own choice and at its own expense.

IV. (C). If an adjudication adverse to Seller has been made in any such suit by said court of record having primary jurisdiction thereof, and if no settlement approved by Buyer has been effected previously, and Seller shall, in its best judgment, elect not to appeal from such adverse adjudication or to continue the defense of such suit, then, in that event, Seller agrees to give timely notice to Buyer and agrees that Buyer may, at its election and at its own expense, continue the defense of such suit, file and perfect appeals to courts of higher jurisdiction, and do such other things as Buyer believes necessary or desirable to obtain a final adjudication or settlement of such suit, and in such event, Seller agrees that Buyer may use its name for all proper purposes connected with the continuance of such suits, and that it will cooperate fully with Buyer in any proper and legal manner necessary to aid Buyer in the furtherance of the defense of such suits.

IV. (D). As used in Sections II and IV of this Exhibit B, the term "Present Emergency" shall mean the period that the United States is at war or the period of the existing National Emergency as declared by the President to exist in his proclamation dated May 27, 1941, whichever period is the longer.

[fol. 83] V. Seller further represents that no patent royalties other than those set forth in Sections I, II and III of this Exhibit B have knowingly been included in the base prices set forth in Section IV of the foregoing contract.

VI. Seller further covenants that any "catalytic cracking royalty sums", any "contingent sums" and any "catalytic isomerization sums" paid by it and included within said base prices shall be paid in good faith only to a third party or parties having a licensing position recognized by a substantial portion of the refining industry to license the catalytic cracking process, the sulfuric acid alkylation process, and the catalytic isomerization process, respectively, of the type employed by Seller.

[fols. 84-268] *Guarantee by Reconstruction Finance Corporation*

In consideration of the execution of the within contract and as an inducement to Richfield Oil Corporation to enter into said contract, Reconstruction Finance Corporation does hereby guarantee the full and complete performance of all of the terms and conditions of said contract on the part of Defense Supplies Corporation (a subsidiary of Reconstruction Finance Corporation) to be performed at the time and in the manner therein provided.

In witness whereof, Reconstruction Finance Corporation has caused this Guarantee to be executed by its officers thereunto duly authorized as of February 20, 1943.

Reconstruction Finance Corporation by Charles B. Henderson, Chairman.

Attest: (signature illegible), Secretary.

[fol. 269] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

No. 6896-Y

UNITED STATES OF AMERICA, Plaintiff

vs.

RICHFIELD OIL CORPORATION, Defendant

OPINION—Filed July 2, 1951

Appearances:

For Plaintiff: William C. Dixon, Special Assistant to the Attorney General; Theodore M. Alexander, T. Keister

Greer, Theron M. Hall, Lawrence M. Somerville, Special Attorneys, Anti-Trust Division, Department of Justice, Los Angeles, California.

For Defendant: William J. DeMartini, Robert E. Paradise, Los Angeles, California.

[fol. 270] YANKWICH, District Judge:

This is an action instituted by the United States Government against Richfield Oil Corporation,—to be referred to as Richfield,—a corporation organized under the laws of the State of Delaware, with offices and its principal place of business in Los Angeles, California, in which the Government seeks equitable relief under Section 4 of the Act of the Congress of July 2, 1890, commonly referred to as the Sherman Anti-Trust Act (1), and under Section 15 of the Act of the Congress of October 15, 1914, as amended, commonly known as the Clayton Act (8). The Government seeks to prevent and restrain violations of Section 1 of the Sherman Anti-Trust Act (3) and Section 3 of the Clayton Act (4).

I

The Nature of the Controversy

Richfield is engaged in the business of acquiring and developing oil reserves and producing, transporting, refining and marketing petroleum and petroleum products therefrom in the States of California, Oregon, Washington, Nevada, Idaho, Arizona, Texas and New Mexico. No evidence was offered relating to activities in the States of Texas and New Mexico, but the pleadings alleged, and the evidence in the case showed, that, in the disposition of its products in the six States named, Richfield availed itself of various forms of outlets which were referred to as L-O (leased-out) stations, and "dealer" stations, designated as 337 and 3-C stations. Through regional representatives, merchandisers, [fol. 271] salesmen and others, whose relation to the company need not be gone into, the petroleum products were supplied to the operators of these stations.

Richfield also deals in automotive accessories manufactured by others, which were referred to during the trial as "sponsored products". These consist of replacement parts

and articles sold and used in servicing or repairing automotive vehicles. These include tires, tubes, batteries, spark plugs, oil filters, fan belts, battery cables, lamp bulbs, fuses, windshield wiper blades, tire repair and vulcanizing kits, anti-freeze, tire chains, and similar items.

During the trial, these were referred to as "TBA". It is the assertion of the Government that the various agreements, written and oral, existing between Richfield and the operators of these three types of stations, bind them, in effect, to secure *their entire requirements*, both as to petroleum products and TBA, exclusively from Richfield; that they are forbidden to handle petroleum products of any other company or to handle accessories competitive with those distributed or sponsored by Richfield.

In brief, the Government claims that these contracts are an unreasonable restraint of interstate trade or commerce, in violation of Section 1 of the Sherman Act, and substantially lessen competition and tend to create a monopoly in a line of commerce, in violation of Section 3 of the Clayton Act.

Richfield has denied that there is a violation of either statute in their relations with any of the groups of dealers mentioned, either as to their petroleum products, or as to the sponsored TBA products.

[fol. 272]

II

The Commerce Involved

Despite voluminous testimony, the scope of the inquiry is rather narrow. The interstate origin and nature of the commerce of both the petroleum products and TBA is established beyond dispute. The petroleum products originate in oil reserves and producing wells and bulk plants and refineries operated in California and elsewhere, the products of which move across state lines continuously to supply the various stations. Richfield has oil reserves and producing wells in certain oil fields in California. Crude oil is transported by Richfield from producing wells in California to its refineries located at Watson and Vinvale, California. At the Watson refinery crude oil is refined into gasoline and other petroleum products. Richfield owns and operates two natural gasoline plants in California. Gaso-

line and other petroleum products refined at the gasoline plants in California are shipped by Richfield to its refinery at Watson, California. The petroleum products refined at its refinery at Watson, California, are, in some instances, shipped by Richfield from the refinery to bulk plants located in California, Oregon, Washington, Arizona, Nevada and Idaho. Gasoline and petroleum products are stored in bulk plants, and sold and delivered from time to time to service stations located in the respective states in which the bulk plants are located. Richfield maintains pipe lines in California used by it in transporting crude oil and petroleum products between points solely in California. It [fol. 273] maintains automotive vehicles used in making deliveries of petroleum products from bulk plants to service stations located in the respective states in which the bulk plants are located.

Richfield owns 107 bulk plants in California, of which 23 are operated by Richfield and 84 by commission agents, from which petroleum products are distributed by Richfield and commission agents to 1577 service stations in California. It owns 35 bulk plants in Oregon, of which 2 are operated by Richfield and 33 by commission agents, from which petroleum products are distributed by Richfield and commission agents to 388 service stations in Oregon. Richfield owns 36 bulk plants in Washington, of which 4 are operated by it and 32 by commission agents, and from which bulk plants petroleum products are distributed by Richfield and commission agents to 646 service stations in Washington. Richfield owns 7 bulk plants in Nevada, all of which are operated by commission agents, and from which plants petroleum products are distributed by commission agents to 39 service stations in Nevada. Richfield owns 5 bulk plants in Idaho, all of which are operated by commission agents, from which petroleum products are distributed by commission agents to 56 service stations in Idaho. Richfield owns 22 bulk plants in Arizona, of which 2 are operated by Richfield and 20 by commission agents, from which petroleum products are distributed by Richfield and commission agents to 190 service stations in Arizona. In a few instances, petroleum products have been delivered from bulk plants in one state to service stations located in other states.

The sponsored products are manufactured at various industrial plants throughout the United States, from which [fol. 274] they find their way first to the storerooms of the authorized Richfield distributors, and then to the shelves of the individual station operators. So there is a constant flow of interstate commerce in the operations of the defendant. (5)

The competitive products, both petroleum and TBA, which were kept out of these stations as the result of the agreements, were manufactured at various places in the United States. So, in this respect also, if the practices of which the Government complains stand proved, they unquestionably affect the flow of goods and products in interstate commerce. (6) The amount of commerce involved satisfies all the requirements of substantiality laid down by the cases. (7) The anti-trust laws forbid practices through which competitors are

> "shut out of the market by a provision that limits it (a product), not in terms of quality, but in terms of a particular vendor." (8)

And, as said by the Supreme Court in another case:

> "The anti-trust laws are as much violated by the prevention of competition as by its destruction." (9)

Back of this is the fundamental determination embedded in the anti-trust laws to maintain our national economy free by keeping it competitive. The Supreme Court has expressed this thought very recently:

> "The heart of our national economic policy long has been faith in the value of competition. In the Sherman [fol. 275] and Clayton Acts, as well as in the Robinson-Patman Act 'Congress was dealing with competition, which it sought to protect, and monopoly, which it sought to prevent.'" (10)

A few statistics supplied by Richfield, and culled from the record, will suffice to demonstrate readily that the commerce affected is substantial. The number of L-O stations in 1950 was 1343. The number of 337 stations was 1361. The 3-C stations numbered 261. The Government,

by counting the separate written agreements, which go to make up each unit, including the painting agreements, arrives at a total of 4581. If to these are added the oral arrangements affecting the stations, we have a total of 7546 written and oral agreements.

The written contracts are approved at one of Richfield's divisional offices, of which there are three located in the States of California and Washington. The contracts come to the respective offices in those States from various other States for approval. Some of the contracts are required to be approved at the main Richfield office in Los Angeles.

The gallonage of gasoline distributed in 1950 through the L-O stations was 160,795, of the money value of $23,790,-968.00. The gallonage of gasoline distributed through the 337 stations during the same year was 67,476, with a money value of $10,64,158.00. As to the 3-C stations, the gallonage was 20,385, and the money value $3,069,987.00. For the same year the gallonage of motor oils and greases was, as to all types of stations, 3,491,369, of the money value of $2,546,127.59. For the same year, the money value of [fol. 276] tires and tubes sold to all three types of stations was $2,646,400.07, of batteries, $48,040.37, and of other accessories, $956,412.96. The interstate nature of the commerce involved and its substantiality, both from the standpoint of the number of outlets involved and the quantity and value of the products handled, being evident, the pattern of our inquiry becomes very narrow. It is reduced to the problem whether the agreements through which this commerce was handled are of the type condemned by the decision in the Standard Oil Case (11) decided by me in 1948, and affirmed by the Supreme Court. (12)

It is to be borne in mind that the opinion of the Supreme Court contented itself with the determination that the agreements there involved violated Section 3 of the Clayton Act. Here, we are concerned with the alleged violation of both acts. And the case calls for the determination of both questions.

But, while the same principles are to be applied to the three different outlets, it is necessary to examine separately their characteristics, in order to determine whether there is any difference (a) as to the relation existing

between the operators and Richfield, and (b) the restrictive practices in effect.

III

The Leases on L-O (Leased-Out) Stations

The problem is simplified as to the L-O stations by the Richfield admission that the oral understandings under which the leases are made, and for the violation of which the leases are forfeited under the 24-hours' termination [fol. 277] clause, to be referred to, not only provide but *demand* that Richfield petroleum products and Richfield-sponsored TBA products be handled exclusively and without deviation.

So the main consideration as to these stations is the relations which control them. The extent of the commerce affecting these stations has already been adverted to. It should be added that Richfield claims an investment in these stations as of December 31, 1950, of $19,542,082.58, of which the cost of the land purchased represents $11,213,657.33, and the cost of improvements installed, $8,328,425.25. The latter figure was deducted as depreciation for tax purposes over a period of five years. The figures as to improvements relate chiefly to the stations themselves, and adjunct buildings and the permanent equipment. They do not include improvements such as tanks, pumps, compressors, hoists, neon signs, hiboys and the like.

In justification of the investment, and, for that matter, of the entire policy, Richfield asserts that once "the shooting war" was over, and the purchase of gasoline by Government agencies had decreased, it was *compelled* to find an outlet for the increased refining facilities which it had built during the war period, and that the only certain way of securing an assured market was through controlled units.

Intent and purpose are an element in a case involving violation of Section 2 of the Sherman Act (13). But such violation is not concerned with a specific intent. And a specific intent, or good motive, for that matter, is not [fol. 278] material when we deal with Section 1 of the Sherman Act (14), or Section 3 of the Clayton Act (15). The determining consideration is the effect of a particular practice on interstate trade or commerce. Other considera-

tions, *such as economic necessity,* do not, and should not enter into our inquiry whether the practices here involved violate either statute. (16)

Very recently the Supreme Court rejected a contention that the anti-trust statute should not be given full effect in a particular field, in view of certain current foreign trade conditions. (17) The argument is just as valid when applied to market conditions as to petroleum and allied products in a specific area in this country. Economic considerations are relevant in determining legislative policy. They may be important in interpreting the limit of that policy. They do not constitute an excuse for the violation of the legislative policy declared in a statute.

These preliminary observations clear the way for a consideration of the nature of the arrangements under which the L-O stations were operated. The foundation of the relations was the service station lease, denominated Form 542. It was prepared by Richfield, underwent several changes through the years, and, in its final form, as it appears in this case, it was an elaborate lease containing fifteen different clauses setting forth the conditions governing the transfer of the property.

The *habendum* clause of each lease leases the described real property and the improvements and facilities thereon [fol. 279] to the designated lessee for a definite period of time, subject to a 24-hours' termination clause, at a specified rental per month, payable in advance on the first day of each of the calendar months. In addition to this, the lessee agrees to pay as rental a sum equivalent to the total number of gallons of gasoline in excess of a certain stated maximum, delivered to the premises during the month for which payment is being made for resale and distribution, the rate being fixed for each of the twelve months of the year, on the basis of the excess over a definite amount of gallons. Richfield has the right to demand a deposit of cash or bond to secure the payment of the rent in amount equal to the average rent payable.

The lease limits the use of the premises to the operator of a gasoline station, prohibits the use for any other or an unlawful purpose, and forbids the commission of a nuisance by the lessee. The prohibition by law of the

continuance of the business terminates the lease. There follow provisions placing upon the lessee the duty to maintain the premises and the improvements in good repair and a clean and safe condition, and prohibiting the making of changes or alterations without the permission of the lessor. The remaining clauses may be summed up briefly. The lessee, upon expiration of the lease or its termination, agrees to surrender the premises in as good a condition as when received, wear and tear excepted. Destruction by fire terminates the lease. The lessee is responsible for all charges for utilities. Failure to comply with the terms of the lease, default in payment of rent, bankruptcy or in- [fol. 280] solvency, the levying of an attachment, assignment or execution, or the institution of any other legal proceedings affecting the premises or any of the equipment on them, is ground for termination without notice. The lease is not assignable, either voluntarily or by operation of law. And the lessee agrees to indemnify the lessor against any claims for injury to property or person occurring on the premises during the operation of the lease by himself, his agents or employees. There follow the usual general clauses protecting against waiver of breach, making provision for attorney's fees for the lessor in case of suit, and designating the place to serve notice, and *merging into the instrument all other agreements.*

IV

The Nature of the Lessee's Interest

If this instrument is assayed by the accepted tests which determine the relation of landlord and tenant, the conclusion is inescapable that it is a lease. For we have a relation which is the result of specific agreement, which calls for (a) a fixed term, (b) at a determined rental, (c) by which a specific estate passes to the tenant, (d) who takes exclusive possession of the premises against all the world, including the owner, (e) all the lessee's rights being subordinated to the primary right to the fee of the owner, and (f) subject to reversion to him at the end of the term, or on termination of the lease. (18)

Implicit in the contract is the lessee's assumption of

obligation and responsibility for his own acts upon the premises and those of his employees in their relation to [fol. 281] the public, who come in contact with them during the time of his dominion. The lessee is not the employee of Richfield. Richfield pays him no wages or other remuneration. He must carry his own workmen's compensation. He is not carried on their books as an employee for the purpose of social security taxes or any of the withholding taxes, state or federal, incidental to the employer-employee relationship. Richfield is not required to withhold any moneys from him for income tax purposes. Neither are they required to perform any of the duties just mentioned as to any of the employees who may assist the lessee in the conduct of the station or of any auxiliary repair work upon the premises. The lessee is solely responsible for his own conduct and that of his employees which may cause damage to the person or property of others. In brief, it would be difficult to find an instrument which so completely makes, by its own terms, the lessee master of the domain covered by the lease as does this lease. He is certainly as independent as any lessee is. And the relationship is no different than that found in the "leased-out" stations in the Standard case. (19)

When, in law, we speak of "an independent contractor," or "an independent business man," we deal with a practical concept, not with a philosophical phrase. We mean a person who, in the performance of a particular contract, or in the conduct of his business, acts chiefly *for himself* and *for his own benefit and profit*, and *not* for others and the benefit and profit of others. And this is true, even though, as in every contract, the other party to the contract may also derive benefits. Mutuality of benefits lies behind every contract. And the fact that a party to such contract may derive a benefit or impose conditions in the carrying on of [fol. 282] an enterprise which transcend the usual conditions, does not destroy the independent character of the other party.

In a sense, in this complex and interdependent world, no one is really independent. But when, through a formal and written instrument, a relationship is established by which exclusive possession and control of property is

turned over to another, in exchange for a specified rental with full responsibility for the conduct of the business falling upon the lessee, with all profit or loss accruing entirely to him and not to the transferor, the relationship satisfies all the requirements of an independent enterprise. And when a corporation like Richfield deals with such an enterprise, it cannot be said to be dealing *with itself*, as though the estate it created were nothing and the person in charge, to whom possession was turned over, is a mere employee because, under clauses not contained in the contract, they supervise his actions, regulate,—to some extent, —his personal appearance, and do other things, some distinctly illegal, as will presently appear.

In this respect, the Timkin case, already referred to, is very revealing. It involved a prosecution under Section 2 of the Sherman Act. It was Timkin's contention,—*as it is the contention of Richfield*,—that certain wholly-owned subsidiaries were *so controlled* by them, that, in reality, *they were not other corporations* with which they could conspire to violate the Act. But the Supreme Court declined [fol. 283] to allow the control to destroy the existence of the units as separate business entities, and held that the law was violated when Timkin engaged in the prohibited acts *with its own subsidiaries*. Just as Richfield here would have us characterize their relationship with the L-O stations by some name unknown to common-law categories, Timkin, in that case, resorted to the term "joint venture" to avoid the charge of illegality. But the Supreme Court's answer was brief and decisive:

> "The fact that there is common ownership or control of the contracting corporations does not liberate them from the impact of the antitrust laws. E. G. Kiefer-Stewart Co. v. Seagram & Sons, supra at 215. Nor do we find any support in reason or authority for the proposition that agreements between legally separate persons and companies to suppress competition among themselves and others can be justified by labeling the project a 'joint venture.' Perhaps every agreement and combination to restrain trade could be so labeled." (20)

The principle which the Supreme Court applied is not new. That Court has repeatedly declared that

> "common ownership and control does not liberate corporations from the impact of the anti-trust laws." (21)

This indicates clearly that the principle is applicable whether we are dealing with a monopoly case under Section [fol. 284] 2 of the Act—as the Timkin case was,—or a case in restraint of trade under Section 1 of the Act. Rightly. For in all these cases, the Courts have insisted

> "reality must dominate the judgment." (22)

And, if control of instrumentalities which results in abolishing competition among them were sufficient to relieve the parties of the effect of the agreement on interstate commerce, the purpose of the Act could be subverted by the establishment by large industrial concerns of "puppet" outlets tied to the parent organization by the most restrictive agreements which would not only unreasonably restrain trade and lessen competition, but actually destroy it.

In interpreting this and other statutes, we must eschew the tyranny of words or labels. We must, in each case, get behind the façade which the organization has created,—as did the Supreme Court in the Masonite case when it went behind a del credere agency, which, at first blush, seemed to be a fiduciary relationship established by the concern for its own purposes, and found, instead, a means for monopolization. The Court did not then hesitate to declare the agency a mere cloak for restraints:

> "So far as the Sherman Act is concerned, the result must turn not on the skill with which counsel has manipulated the concepts of 'sale' and 'agency' but on the significance of the business practices in the term of restraint of trade." (23)

[fol. 285] In the light of these norms, we continue our analysis of the relations established by the written lease. The operator pays for his gasoline and the petroleum products sold to him by Richfield. They are not merely consigned to him. Upon execution of the lease, if he was

preceded by another lessee, he pays for the inventory of petroleum products on the premises, and of the approved TBA products. He is responsible for credit losses, except such as result from extension of credits to customers carrying Richfield cards. If we consider the provision for 24-hours' termination as valid, the lessee has, at the worst, *a tenancy at will.* And in the American law of landlord and tenant, this is an estate carved out and independent of, but subordinate to, the estate of the transferor. (24) While the ancient common law did not favor this form of estate, it recognized it. Indeed, even in the absence of a statute the courts of England required a notice to quit in order to terminate the estate. (25) State courts, including those of California, have followed the trend of turning an estate at will into an estate for a definite term whenever, through the method of paying rent, or other provisions in the lease, it was apparent that a definite term was contemplated. (26)

So the Courts have done all in their power to give to this estate, so humble in the federal law, a higher standing in accordance with their desire to achieve a more rational and just relationship than strict application of antiquated feudal principles would warrant. And it is interesting to note that in a very early California case,—[fol. 286] even before the law as just stated became crystallized,—the Courts ranked the rights of a tenant at will *so much higher* than those of an employee that they rejected the contention of one who was the caretaker of property of another that he be considered a tenant at will, saying:

> "Such a principle is not countenanced by the authorities, and its adoption would lead to very inconvenient results. *It would give to servants and agents novel and embarrassing powers over employers and their property.*" (27) (Emphasis added.)

And I am inclined to think that, because of the conflict of the 24-hours' termination clause with the monthly rental provisions, Courts would consider the tenancy created by the L-O agreements, *at least,* a month-to-month tenancy *terminable only* upon the minimum notice required in such cases.

In the case before us, there is no evidence that it was ever used as a means for terminating the lease for the in-

fraction of any of its express conditions. It was used only to enforce the illegal restraints superimposed orally. Indeed, it was the boast of the representatives of the Company that so long as the provision as to exclusive dealing in Richfield products or Richfield sponsored TBA products were complied with, the tenancy was of practically *unlimited duration*, and that prospective lessees *were so informed*.

[fol. 287] V

The Oral Requirements Restrictions

So we come to the question: Is the independence, both legal and factual, created by the lease destroyed by the oral agreements and conditions superimposed by Richfield and which binds the lessee to the distribution of Richfield petroleum products and Richfield sponsored TBA products under penalty rigidly enforced,—as the record shows,—of ouster unceremonious on 24-hours' notice, sometimes effected between sundown and sunup of successive days? Richfield insists that it is. The fact of control is admitted in their Answer, which states:

> "That each of the service stations owned by Richfield or leased by Richfield from a party other than the operator thereof, was acquired and/or constructed by Richfield as an outlet for the sale of Richfield petroleum products to the motoring public; and that each operator of any such service station has been selected and trained by Richfield and has been permitted by Richfield to occupy such service station and use Richfield's land, building, facilities and equipment on a temporary basis subject to termination on 24-hours' notice."

Evidencing the rigor with which the control was exercised, there were shown at the trial instances of termination of the lease for failure to conform to the restrictions as to [fol. 288] the products to be sold. On termination, no matter how long the occupancy had been, the lessee was not allowed to choose his successor, even in cases where the latter had agreed to purchase from him not only the petroleum products and approved products, but also the non-approved items on his shelves or equipment which he has installed.

On termination, it was Richfield's policy to instruct the buyer that he "was not required" to buy the non-sponsored TBA products or other equipment owned by the lessee. And in all instances in which the suggestion was made, "he did not buy". Nor did Richfield allow the lessee to capitalize on his good will. On termination, the lessee could receive no compensation for good will, even when he found a buyer willing to pay for the good will which the long occupancy and the efforts of the lessee had created at the particular station.

These and other incidences of control, not spelled out in the lease, but made effective through Richfield's exercise of power, led Richfield to insist at the trial that their control over the L-O type station *was*, in effect, *ownership*. And they sought to apply to this ownership my statement in the Standard case that restrictive agreements are not prohibited as to wholly-owned outlets. (28)

We need not quarrel with the statement referred to, although the form in which it was cast indicates clearly that it applied only to the facts there before the Court. However, the discussion which precedes indicates that the Supreme Court has held repeatedly that even ownership does [fol. 289] not stand in the way of the application of the restraint provisions of the Sherman Anti-Trust Law. (29) And the obvious answer to the claim of ownership is the same which Courts give in tax cases to contentions of taxpayers who, after having chosen to do business under a certain form of organization, try to have us disregard it, on the ground that they were, in reality, "doing business with themselves". (30) And the answer is that a person choosing a particular entity in order to achieve certain results is not in a position to ask us to disregard it, when he wishes to avoid results unanticipated.

So Richfield is tied to the form they chose. And if it does not give them immunity from the admitted restraints they impose through it, they must bear the consequences of their voluntary act, regardless of any contrary intention they may have had in choosing it.

VI

The "Created" Market

Richfield contends that it "created" these instrumentalities for its own purpose. For this reason, they argue that there could be no restraint of trade, because no competition is involved. (31) No case will be found which supports the contention that the mere creation of an exclusive form of outlet is, in itself, sufficient to avoid the consequences of the anti-trust laws. Indeed, one of the older cases (32) to which the case cited by Richfield referred as its authority, specifically holds that contracts, no matter how worded, will be scrutinized in order to determine [fol. 290] whether they have been entered into or are to be performed for the apparently legitimate purpose which they specify on their face or *for the purpose of restraining the free flow of commerce.* We quote the language of the Court:

> "The court in the Standard Oil Case construed the act as intended to reach only combinations unduly restrictive of the flow of commerce or unduly restrictive of competition, and, illustrating what were such undue or unreasonable combinations, it classed as illegal (p. 58) 'all contracts or acts which were unreasonably restrictive of competitive conditions, either from the nature or character of the contract or act or where the surrounding circumstances were such as to justify the conclusion that they had not been entered into or performed with the legitimate purpose of *reasonably forwarding personal interest and developing trade, but on the contrary were of such a character as to give rise to the inference or presumption that they had been entered into or done with the intent to do wrong to the general public and to limit the right of individuals, thus restraining the free flow of commerce and tending to bring about the evils, such as enhancement of prices, which were considered to be against public policy.*' " (33) (Emphasis added.)

[fol. 291] And in the very case referred to, the following is given as the purpose of the anti-trust statutes:

> "Combination which unreasonably limits competition which would otherwise exist between persons in similar businesses is illegal. A suppression of competition necessarily restrains commerce. Board of Trade v. United States, 246 U. S. 231, 38 S. Ct. 242, 62 L. Ed. 683, Ann. Cas. 1918D, 1207. The purpose of the anti-trust laws—an intendment to secure equality of opportunity —is thwarted if group-power is utilized to eliminate a competitor who is equipped to compete." (34)

The vice of the entire argument lies in the fact that it permits suppression of competition *at the inception of an enterprise,*—a practice against which the Clayton Act is specifically directed. As is shown in this case,—a concern such as Richfield, through investment of large sums of money in real property and on stations, could so tie the hands of the sellers of its products as to completely shut out competition. If the fact that no outlets for the product existed before Richfield entered the field, would give complete immunity, regardless of the purpose for which the outlets are established and of the manifest intent to keep out competitors and to deny to the public at large access to competitive products through these outlets, then the anti-trust laws could be circumvented easily.

[fol. 292] But the argument lacks substance. The trade was there, it being the custom for which it was bidding. And, if in bidding for it, it eliminated others and prevented their access to the products, the market is unreasonably restrained. As said by a unanimous Supreme Court:

> "In order to establish violation of the Sherman Act, is it not necessary to show that the challenged arrangement suppresses all competition between the parties or that the parties themselves are discontented with the arrangement? The interest of the public in the preservation of competition is the primary consideration. The prohibitions of the statute cannot '. . . be evaded by good motives. The law is its own measure of right and wrong, of what it permits, or forbids, and the judgment of the courts cannot set up against it in a

supposed accommodation of its policy with the good intention of parties, and it may be, of some good results.' " (35)

Neither the Curtis case (36) nor the Masonite case (37) warrants the conclusion that the creation of individual outlets creates such immunity. In the Curtis case the Court found that the contracts under consideration created an "agency" between the parties which had none of the features condemned by the anti-trust law. Such relationship found to have been legitimately entered into by the Federal Trade Commission on findings of fact conclusive upon the [fol. 293] Court, the Court found no legal reason to condemn, saying:

"The engagement of competent agents obligated to devote their time and attention to developing the principal's business, to the exclusion of all others, where nothing else appears, has long been recognized as proper and unobjectionable practice. The evidence clearly shows that respondent's agency contracts were made without unlawful motive and in the orderly course of an expanding business. It does not necessarily follow because many agents had been general distributors, that their appointment and limitation amounted to unfair trade practice. * * * Effective competition required that traders have large freedom of action when conducting their own affairs. Success alone does not show reprehensible methods although it may increase or render insuperable the difficulties which rivals must face. The mere selection of competent, successful and exclusive representatives in the orderly course of development can give no just cause for complaint, and, when standing alone, certainly affords no ground for condemnation under the statute." (38)

[fol. 294] The Masonite case has already been commented on. (Part IV of this Opinion) There the Court found no difficulty in condemning what were apparent del credere agencies as means for illegitimate restraint. Convinced that the object of the establishment of the agency was to restrain commerce, the Court found no difficulty in disre-

garding the form. Richfield has enunciated an abstract concept which finds no justification in the history or interpretation of the anti-trust laws. To follow it would mean to turn defiance of law into a virtue, to make legitimate the very *means* of restraint. Granted that a business may create its own outlets, it can do so only by making them *its agency in truth and fact.* It cannot do so by creating a well-recognized legal estate, superimpose on it oral limitations, the object of which is to restrain trade, and then claim legitimacy for this very restraint. Even exclusive agencies, if they are of a character as to result in business restraints of commerce, would be violative of the Clayton Act, even if, at their creation, they did not violate the Sherman Act.

So Richfield cannot, by creating the relationship of landlord and tenant, long and anciently known to our law, with all the responsibilities that such relationship imposes on the transferee, restrain trade through that outlet by imposing illegitimate oral contracts which restrict the transferee to the handling of Richfield's products or Richfield's sponsored products. Even if it be admitted that if the outlet were its "exclusive agency", the limitation could be imposed as an incident of ownership, under the form it has chosen, [fol. 295] Richfield cannot deny to the dealers the right to deal with other suppliers as to their products, or to deny to such suppliers access to the dealers, so that these varied products may reach the public, whose protection the anti-trust laws seek. The law, as the Supreme Court has stated,

> "does not compel competition." (39)

But restrictive contracts are condemned because of their

> "denial to commerce of the supposed protection of competition." (40)

And, as said in the same case, when such restrictions

> "are parts of a plan, the mere projecting of which condemns them unconditionally, the realization of the plan itself must also be proscribed." (41)

It follows that the L-O operators are, by the instrument of their creation, independent business men, as that concept is understood in anti-trust law, and that the imposition on

them by oral agreements of restrictive conditions limiting their dealings to Richfield products and Richfield sponsored TBA products, and denying access to other dealers in petroleum and accessories to these stations, and, through them, to the public, is violative of both Section 1 of the Sherman Anti-Trust Law and Section 3 of the Clayton Act.

VII

The "Dealer" Stations

We come now to the agreements under which the other stations are operated. We refer to the 337 stations and to [fol. 296] the 3-C stations. As to these stations, Richfield admits that they are independent. Their chief witness and general manager in charge of sales, W. G. King, admitted that they were such and he applied the designation to station dealers "who owned their places of business or leased them from others than Richfield."

The problem as to these stations is, therefore, a factual one: Do the written instruments under which these stations dispense Richfield products and Richfield sponsored TBA products and the oral agreements accompanying them restrict them to the handling of these products exclusively?

Richfield has classified these stations as "dealer stations". They include service stations which are owned by service station dealers or leased by them from a lessor other than Richfield. Richfield has leased these stations from the dealers, and, in turn, has sub-leased them back to the dealers and has entered into a written sales contract with each dealer covering the petroleum products to be handled by the dealer. Each of the units into which this group is divided—377 and 3-C—is governed by multiple instruments.

In the case of the 337 stations, the fundamental instrument is a service station lease, originally running from the owner to Richfield, and an operator's lease from Richfield to the operator, the operator assuming, in substance, the obligations of Richfield under their primary lease, with some modifications at times as to the rent paid. The record [fol. 297] discloses that in some instances, the rental received by Richfield from the operator is less than it pays under its lease with the owner.

For brevity's sake, we omit the description of the terms, which are the usual terms in such leases. Their enumeration would not aid the discussion, because the tie-in as to these stations is represented by an operator's sales contract whereby the operator agrees to purchase from Richfield a *definite* quantity of gasoline, lubricating oil and greases for each month. The evidence in the record shows that the computation intended to cover 80 per cent of the estimated requirement.

As to the other stations, presumably stations owned by the operator as to which no landlord and tenant relationship exists between Richfield and the operator or Richfield and the original owner, the tie-in agreement consists of a sales contract of the type already described and a painting agreement whereby Richfield agrees to paint the station in its own colors and insignia. After an expenditure of a definite sum of money, the dealer agrees to

> "remove from the surface of the station which is to be painted all signs and insignia, and upon completion of the painting of said service station by Richfield, shall not place upon or over the painted surfaces any advertising sign, trademark, insignia, or any other matter without first procuring the consent and approval of Richfield."

[fol. 298] And Richfield retains the right to cause the removal of any signs placed in violation of this clause. The violation of any of the terms of the agreement makes the dealer liable to Richfield for the amount expended in painting.

It is quite evident that the aim of the sales contract is to so control the outlet for petroleum products that there is little, if any, room left for dispensing products other than those contracted for. Such arrangements were envisaged by me in the Standard case. And it was pointed out in that opinion that, while an agreement of this character would as effectively shut out access to other products, it still left a *possibility* of dealing with others should the operator be unable to secure his full supply from the contracting supplier.

The painting agreement is obviously intended to secure

an exclusive outlet under the guise of a painting agreement. Richfield is not in the business of painting. And the undertaking to paint at a certain cost in consideration of flying its colors under penalty of repayment when the agreement is breached, when tied to a sales contract which envisages 80 per cent of the needs of the operator, and to which the painting contract specifically refers,—could have but *one object*,—i.e., to shut out all competition. And, in reality, that was *the effect* of the arrangement.

Richfield's witnesses testified that the instructions to their representatives were "to persuade" the dealers working either under 337 or 3-C arrangements to confine themselves to Richfield products. [fol. 299] On the other hand, individual operators of these types of stations have testified to the fact that they were "coerced" into limiting themselves to Richfield products, that they were "called on the carpet", as it were, if other products were on their shelves.

It is not denied that Richfield maintained a policy against "split" pumps,—that is, pumps of other gasoline distributors. And it is quite evident that, in one form or another, the policy has been enforced, and that the moment gasoline of another concern was handled by any of the operators on these leases,—as one of their own witnesses put it,—Richfield "was no longer interested in the station", and terminated their relationship. Some of Richfield's own field representatives, called by the Government, testified that their instructions as to these stations were not to accept them and sell products to them, except upon a hundred per cent basis, i.e., that they deal only in Richfield products. Unauthorized signs were reported to Richfield. Orders were given to remove these competitive signs, when discovered. And, as to both types of stations, Richfield salesmen testified that their instructions were that only approved merchandise was to be handled, and that they understood the sales and painting agreements to call for that policy, and so informed the operators of "dealer" stations.

There is also evident that, despite the asserted independence of these operators so far as TBA products are concerned, in reality, there was coercion to induce them to [fol. 300] confine their dealings to the sponsored products. In truth, there is evidence that the policy of the Company was that if "any dealer" refused to interest himself in

Richfield sponsored TBA products, "then it's a new dealer",—i.e., the instructions were to cancel the arrangement, whatever it was.

The fact that non-sponsored TBA products were more profitable to the dealers, either because of better discounts or quicker fulfillment of warranties, shows Richfield's motivation in keeping this trade for itself by means of these agreements. It is true there were denials by witnesses for Richfield. But it is significant that the denials are mostly by persons who either made policy or carried it into effect, or who testified to instructions given or received on the subject.

On the other hand, the existence of the practice is testified to by men in charge of the stations or by men in the field who testified to *particular* experiences and incidents.

So the trier of fact must choose. And, when confronted by a series of instruments, the sole object of which is to tie these stations to contracts which, in effect, are *requirement* contracts, although not so denominated, the testimony of the men in the field who actually were told that they *could not* trade freely with outsiders fits into the scheme which the sales contracts coupled with the leases, and the sales contracts couple- with the painting agreements, evidently was intended to set up.

[fol. 301] We conclude, therefore, that the agreements relating to L-O, 337 and 3-C stations under which Richfield has operated in the six named States, are, and each of them is, in their creation and effect, in violation of Section 1 of the Sherman Anti-Trust Act and Section 3 of the Clayton Act. (42)

Judgment will, therefore, be for the plaintiff upon the following specific findings:

(1) The Richfield agreement as to each of the three types of stations relate to interstate commerce.

(2) They affect, and the transactions under them are, in the course of interstate commerce.

(3) The relation established by each of the three types of agreements, L-O, 337 and 3-C, is that of independent contractor, each of the operators being an independent business man, as that term is understood in anti-trust law.

(4) The 24-hours' termination clause has been used as

an instrumentality to force upon the lessees of L-O stations illegal restrictions as to the types of petroleum and sponsored TBA products to be handled on the premises.

(5) The 24-hours' termination clause is invalid, against public policy, and cannot, either under state or federal law, be enforced as a means of terminating the lease for even legal grounds by any notice by either side less than at least the minimum rental period for which rent is reserved, one month.

[fol. 302] (6) Richfield should be prohibited from using the 24-hours' termination clause at all to enforce its restrictive conditions as to the products sold on the premises.

(7) The agreements in the form of leases, sales contracts and/or painting contracts, and the oral agreements superimposed on them confine the operations of the stations to which they apply to dealing exclusively with Richfield petroleum products and automotive accessories handled or sponsored by Richfield.

(8) The agreements lock out dealers from sources of competitive products originating in interstate commerce.

(9) The agreements deny to dealers and, through them to the public, access to such competitive products.

(10) The agreements deny to manufacturers or suppliers of such products access to the outlets controlled by the independent business men who operate the three types of stations.

(11) The agreements affect a substantial number of outlets and a substantial amount of products, whether considered comparatively or not.

(12) The agreements constitute an unreasonable restraint of trade and commerce among the States, under Section 1 of the Sherman Anti-Trust Act. (15 U. S. C. A., Sec. 1)

(13) The agreements result in a substantial lessening of competition and tend to create a monopoly in a line of commerce in contravention of Section 3 of the Clayton Act. (15 U. S. C. A., Sec. 14)

[fol. 303] (14) The agreements are illegal in their effect and should be enjoined.

Dated this 2nd day of July, 1951.

Leon R. Yankwich, Judge.

[fol. 303a] Notes to Text

1. 15 U. S. C. A., Sec. 4.
2. 15 U. S. C. A., Sec. 25.
3. 15 U. S. C. A., Sec. 1.
4. 15 U. S. C. A., Sec. 14.
5. Santa Cruz Fruit Packing Company v. Labor Board, 1938, 303 U. S. 453, 463; United States v. Yellow Cab Company, 1947, 332 U. S. 218, 224-226; United States v. Paramount Pictures, 1948, 334 U. S. 131, 173; Carter Carburetor Corp. v. Federal Trade Commission, 1940, 8 Cir., 112 F(2) 722, 730; United States v. Standard Oil Company of California, 1948, D. C. Cal., 78 F. Supp. 850, 856, and cases cited in Notes 3 and 4.
6. See writer's opinion in United States v. Standard Oil Company of California, 1948, D. C. Cal., 78 F. Supp. 850, 856-864, and cases cited in Footnotes 4-33. And see, Fashion Originators' Guild v. Federal Trade Commission, 1940, 2 Cir., 114 F(2) 80, 84-85; Wickard v. Filburn, 1942, 317 U. S. 111, 118-128; Mandeville Farms, Inc. v. American Crystal Sugar Company, 1948, 334 U. S. 219, 229-234.
7. Standard Oil Company v. United States, 1911, 221 U. S. 1, 61; Indiana Farmer's Guide Company v. Prairie Farmer Publishing Company, 1934, 293 U. S. 278-279; United States v. Columbia Steel Company, 1948, 334 U. S. [fol. 304] 495, 525; United States v. Griffith, 1948, 334 U. S. 100, 105-107; William Golman Theatres, Inc. v. Loew's Inc., 1945, 3 Cir., 150 F(2) 738, 744.
8. International Salt Company v. United States, 1947, 332 U. S. 392, 398.
9. United States v. Griffith, 1948, 334 U. S. 100, 107.
10. Standard Oil Company v. Trade Commission, 1951, 340 U. S. 231, 248-249. See the writer's opinion in Balian Ice Cream Company v. Arden Farms Company, 1950, D. C. Cal., 94 Supp. 796, 801, and cases cited in Notes 18 and 19; and F. & H. Ice Cream Company v. Arden Farms Company, 1951, D. C. Cal., —— F. Supp. ——, especially Note 44, which gives a history of the development of the concept which led to the adoption of the anti-trust laws. And see, Shotkin v. General Electric Company, 1948, 10 Cir., 171 F(2) 236, 238; United States v. Underwriters' Assn., 1944,

322 U. S. 533, 553-554. And for a comprehensive review of the anti-trust laws, see, "Anti-Trust Law", The University of Illinois Law Forum, Vol. 1950, No. 4, pp. 491-672.

11. United States v. Standard Oil Company of California, 1948, D. C. Cal., 78 F. Supp. 850.

12. Standard Oil Company of California v. United States, 1949, 337 U. S. 293.

[fol. 305] 13. 15 U. S. C. A., Sec. 2. See, United States v. Griffith, 1948, 334 U. S. 100, 105-106; United States v. Paramount Pictures, 1948, 334 U. S. 131, 173-174.

14. 15 U. S. C. A., Sec. 1. See, Paramount Famous Corp. v. United States, 1930, 282 U. S. 30, 44; United States v. Masonite Corp., 1942, 316 U. S. 265, 275; Fashion Originators' Guild v. Federal Trade Commission, 1940, 2 Cir., 114 F(2) 80, Note 6.

15. 15 U. S. C. A., Sec. 14. See, Fashion Originators' Guild v. Federal Trade Commission, 1941, 312 U. S. 457, 468-469.

16. Standard Oil Company v. United States, 1949, 337 U. S. 293, 311-313.

17. Timkin Roller Bearing Co. v. United States, No. 353, Supreme Court, decided June 4, 1951.

18. 51 C. J. S., Landlord and Tenant, Secs. 1-3; 32 Am. Jur., Landlord and Tenant, Sec. 2.

19. United States v. Standard Oil Co. of California, 1948, D. C. Cal., 78 F. Supp. 850. Richfield contended at the trial that, as to certain leased stations, Standard had admitted that they were operated by "independent contractors". But the conclusion reached in the case was not based upon any admission. Standard contested all the way the validity of the tie-in contracts as to "every type" of station involved. And the conclusion that certain station operators were independent contractors was based upon the facts in [fol. 306] the case and not upon any admission by Standard. (See Finding 3, p. 875 of Opinion.)

20. Timkin Roller Bearing Company v. United States, No. 352, Supreme Court, decided June 4, 1951.

21. Kiefer-Stewart Company v. Seagram & Sons, Inc., 1951, 340 U. S. 211, 215; and see, Appalachian Coals, Inc. v. United States, 1933, 288 U. S. 344, 360-361; 376-377; United States v. Yellow Cab Co., 1947, 332 U. S. 218, 227.

22. Appalachian Coals, Inc. v. United States, supra, p. 360.

23. United States v. Masonite Corp., 1942, 316 U. S. 265, 280.

24. 51 C. J. S., Landlord and Tenant, Sec. 156; 32 Am. Jur., Landlord and Tenant, Secs. 66-70; Restatement, Property, Secs. 21, 45; California Civil Code, Sec. 761; and see, Smith v. Royal Insurance Company, Ltd., 1940, 9 Cir., 111 F(2) 667, 670-671.

25. Spiritwood Grain Co. v. Northern Pacific Ry. Co., 1950, 8 Cir., 179 F(2) 338, 341.

26. Phelan v. Anderson, 1897, 118 C. 504, 505-506; see, Psihozios v. Humber, 1947, 80 C. A. (2) 215, 220; Camp v. Matich, 1948, 87 C. A. (2) 660, 667.

27. Mitchell v. Davis, 1862, 20 C. 45, 47-48. This early case enunciated a rule, which has since become general. 32 Am. Jur., Landlord and Tenant, Sec. 9.

[fol. 307] 28. United States v. Standard Oil Company of California, 1948, D. C. Cal., 78 F. Supp. 850, at p. 854.

29. See cases cited in Notes 21 and 22. And see, Associated Press v. United States, 1945, 326 U. S. 1, 15.

30. Pacific Magnesium, Inc. v. Westover, 1948, D. C. Cal., 86 F. Supp. 644, and cases cited in Notes 4-6 therein; Pacific Magnesium Co. v. Westover, 1950, 9 Cir., 183 F(2) 584.

31. There is a statement in one of the cases to which they refer, Wm. Goldman Theatres, Inc. v. Loew's, Inc., 1945, 3 Cir., 150 F(2) 738, 743:

> "The restraint of trade contemplated by the statute means restraint of competition. United States v. Eastern Retail L. D. Ass'n., 234 U. S. 600, 34 S. Ct., 951, 58 L. Ed. 1490, L. R. A. 1915A, 788."

In the case to which reference is made in support of this statement, United States v. Eastern States Retail Lumber Dealers' Ass'n, 1914, 234 U. S. 600, 610, I find no language capable of being epitomized in this manner.

32. United States v. Eastern States Retail Lumber Dealers' Ass'n., supra.

33. United States v. Eastern States Retail Lumber Dealers' Ass'n, supra, at p. 601.

34. Wm. Goldman Theatres, Inc., v. Loew's, Inc., 1945, 3 Cir., 150 F(2) 738, 743.

[fol. 308] 35. Paramount Famous Lasky Corp. v. United States, 1930, 282 U. S. 30, 44.

36. Federal Trade Commission v. Curtis Company, 1923, 260 U. S. 568. The scope of the case is so limited in Carter Carburetor Corp. v. Federal Trade Commission, 1940, 8 Cir., 112 F. (2) 722, 736.

37. United States v. Masonite Corp., 1942, 316 U. S. 265, 280.

38. United States v. United States Steel Corp., 1920, 251 U. S. 417, 451.

39. United States v. United States Steel Corp., supra, p. 451.

40. United States v. Aluminum Company of America, 1945, 2 Cir., 148 F. (2) 416, 428.

41. United States v. Aluminum Company of America, supra, p. 428. And see, Standard Fashion Co. v. Magrane-Houston Co., 1922, 258 U. S. 346, 356; M. A. Adelman, "Effective Competition and the Anti-Trust Laws", 1948, 61 Harvard Law Review, p. 1289. It should be added that, in the solution of the problem which confronts us, we must bear in mind the type of legislation which we are interpreting. And cases holding operators of stations of this type *employees* under a state Workmen's Compensation Act (Continental Oil Co. v. Sirhall, 1950, — Colo —, 222 P. (2) [fol. 309] 612), or subjecting individual stations to state chain stores taxes (Standard Oil Company of Indiana v. State Board of Equalization, 1940, 110 Mont. 5, 99 P. (a) 229; Maxwell v. Shell Eastern Petroleum Products, Inc., 1937, 4 Cir., 90 F. (2) 39) do not help. For, in interpreting Workmen's Compensation or taxing statutes, Courts notoriously interpret their terms broadly, so as to achieve the beneficient social aims of the statutes. (See, Fox v. Standard Oil Co., 1935, 294 U. S. 87) Nor, for that matter, are we assisted by the recent decision of the District Court of Appeals of California (Mayes v. Richfield, 1951, 103 A. C. A. 23), which has held Richfield liable to third persons for injuries suffered on the premises of one of the L-O sta-

tions. The case was decided upon the theory, submitted to a jury, that, in view of the public purpose of the business conducted on the premises, the lessor cou' ` be held liable, if the leased premises *were not safe for the use intended*, and the condition existed at the time of the transfer.

This decision is in accord with the general view that, while a landlord of leased premises is not ordinarily liable for the injuries occurring thereon, he will be held liable where the property is leased for public purposes,—which the public is expected to enter for the transaction of business. (32 Am. Jur., Landlord and Tenant, Sec. 668) So the California Court, in applying this rule to one of the L-O stations, did not make a determination of the nature of the occupancy binding on us.

[fol. 310] On May 17, 1951, the Supreme Court of California granted a hearing in the case. This means that the Opinion loses all force as a precedent. For the Supreme Court may repudiate the doctrine announced in it. But even if it should stand, it does not go counter to views here expressed.

42. Richfield seems to find comfort in, and justification for, its position in an article, "Exclusive Dealer Devices of Petroleum Products", by Forrest Revere Black, 1940, 29 Georgetown Law Journal, pp. 438, et seq. The article was written before some of the most important decisions in the field of anti-trust law, including the decisions in the Standard case dealing with restrictive contracts, were made. More, a study of the article shows that what the writer sought to show was various devices resorted to by certain companies in order to *avoid* the consequence of regulatory statutes.

His introductory paragraph reads:

> "In any comprehensive history of government regulation of business in America, one chapter must be reserved to relate *the strange story of the ingenious strategy* of the major oil companies in marketing their products through the so-called 'Iowa Plan' and cognate devices, whereby the operator *simulates* the appearance of an independent dealer and the major producing companies thereby *acquire an exclusive outlet and at-*
> [fol. 311] *tempt to evade* the obligations of chain store

> taxes, social security legislation, Workmen's Compensation Laws, public liability insurance and labor troubles from attempts at unionization and collective bargaining." (p. 429) (Emphasis added)

Speaking more specifically of petroleum products, the article states:

> "The retail marketing of petroleum products has gone through several states. The dominant consideration on the part of producers has been a mad race to secure additional retail outlets and increased gallonage, and usually connected with this has been *an attempt to exclude the sale of competitor's products and to control the resale price.*" (p. 439-440) (Emphasis added)

While describing the various marketing methods, including what is known as the "Iowa Plan", —the general effect of which is to make the operator simulate the appearance of an independent dealer when he is, in reality, the manager of a chain store,—*the author does not give them his approval* as successful attempts at avoiding the effect of controls. But, even if such methods of evasion appealed to a writer as a lawyer, they certainly *do not deserve* the approval of a Court. In the field of anti-trust regulations, the aim of courts has always been to look behind devices which, under the appearance of innocuous arrangements,—such as exchange of information, listing of customers and the [fol. 312] like involved attempts to restrain and prevent competition and to enthrone monopoly. So here, our problem is to see what the *true relationship* is, regardless of what Richfield and the operators under its denomination *thought it to be.* And, as already appears, what to Richfield may seem *apparent* independence is demonstrably *real* independence, so far as the application of principles of anti-trust law are concerned. So, to apply a philosophical phrase, what to Richfield seems to be mere *appearance,* has, to us, all the indicial of *reality.*

[fol. 313] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

DECISION AND ORDER—Filed July 2, 1951

The above-entitled cause, heretofore argued, tried and submitted, is now decided as follows:

I

Upon the grounds stated in the Opinion filed herewith, Judgment will be for the Plaintiff as follows:

(1) That the defendant Richfield Oil Company has entered into contracts, consisting of written and oral agreements and understandings, which unreasonably restrain trade and commerce in petroleum products and automotive accessories, in violation of Section 1 of the Sherman Anti-Trust Act;

(2) That the defendant Richfield Oil Company has entered into contracts, consisting of written and oral agreements and understandings, the effect of which has been to substantially lessen and to restrain competition in petroleum [fol. 314] products and automotive accessories, in violation of Section 3 of the Clayton Anti-Trust Act;

(3) That the exclusive supply agreements and oral understandings between defendant and the independent service station operators involved herein (and including L-O, 337 and 3-C types) are in unreasonable restraint of, and substantially lessen competition in, interstate commerce in petroleum products and automotive accessories, and in violation of Section 1 of the Sherman Act and Section 3 of the Clayton Act;

(4) That defendant Richfield and its officers, directors, agents, representatives, and all persons and corporations acting, or claiming to act, on its behalf, be, and they are hereby perpetually enjoined from entering into, or enforcing any written or oral contract, agreement, or understanding, express or implied, with any independent service station operator (including L-O, 337 and 3-C types), or from inducing or compelling, or attempting to induce or compel,

by any means whatever, any independent service station operator (including L-O, 337 and 3-C types) to enter into any contract, agreement, or understanding of any kind whatsoever which provides:

(a) that the independent service station operator (including L-O, 337 and 3-C types) shall secure all of his requirements of petroleum products from defendant Richfield, or shall not handle the petroleum products of any other company;

(b) that the independent service station operator (including L-O, 337 and 3-C types) shall secure all his requirements of any one or more types of automotive accessories from or through defendant Richfield, or will [fol. 315] not handle accessories competitive with those distributed or sponsored by defendant;

(c) that the sale of any petroleum product or automotive accessory by defendant to any independent service station operator (including L-O, 337 and 3-C types) shall be conditioned on the exclusive handling by the independent service station operator of petroleum products or automotive accessories manufactured or sponsored by the defendant;

(5) In order not to deprive the defendant Richfield of the benefit of any appeal in the case, the permanent injunction to be issued shall be stayed until the expiration of six months after the Judgment shall have become final.

II

The Judgment will be based upon the following specific findings:

(1) The Richfield agreements as to each of the three types of stations relate to interstate commerce.

(2) The agreements affect, and the transactions under them are, in the course of interstate commerce.

(3) The relation established by each of the three types of agreements, L-O, 337 and 3-C, is that of independent contractor, each of the operators being an independent business man, as that term is understood in anti-trust law.

(4) The twenty-four hours' termination clause has been used as an instrumentality to force upon the lessees of

L-O stations illegal restrictions as to the types of petroleum and TBA sponsored products to be handled on the premises.

(5) The twenty-four hours' termination clause is invalid, [fol. 316] against public policy, and cannot, either under state or federal law, be enforced as a means of terminating the lease for even legal grounds by any notice by either side less than at least the minimum rental period for which rent is reserved,—one month.

(6) Richfield should be prohibited from using the twenty-four hours' termination clause at all to enforce its restrictive conditions as to the products sold on the premises.

(7) The agreements in the form of leases, sales contracts and/or painting contracts, and the oral agreements superimposed on them confine the operations of the stations to which they apply to dealing exclusively with Richfield petroleum products and automotive accessories handled or sponsored by Richfield.

(8) The agreements lock out dealers from sources of competitive products originating in interstate commerce.

(9) The agreements deny to dealers, and, through them to the public, access to such competitive products.

(10) The agreements deny to manufacturers or suppliers of such products access to the outlets controlled by the independent business men who operate the three types of stations.

(11) The agreements affect a substantial number of outlets and a substantial amount of products, whether considered comparatively or not.

(12) The agreements constitute an unreasonable restraint of trade and commerce among the States, under Section 1 of the Sherman Anti-Trust Act (15 U. S. C. A., Sec. 1.)

(13) The agreements result in a substantial lessening of competition and tend to create a monopoly in a line of commerce, in contravention of Section 3 of the Clayton Act. [fol. 317] (15 U. S. C. A., Sec. 14).

(14) The agreements are illegal in their effect and should be enjoined.

Such findings shall be in addition to such other findings as may be implicit in, and within the scope of, the decision hereby announced, and which may be necessary for the com-

plete determination of the issues made by the pleadings and the proceedings in the case, as decided by the Court.

Findings and Judgment will be prepared by counsel for the plaintiff under Local Rule 7, in accordance herewith and the views expressed in the Opinion.

Dated this 2nd day of July, 1951.

Leon R. Yankwich, Judge.

[fol. 318] IN UNITED STATES DISTRICT COURT

[Title omitted]

OBJECTIONS OF DEFENDANT TO FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL JUDGMENT PROPOSED BY PLAINTIFF—Filed August 2, 1951

Pursuant to Rule 7 of the Rules of the United States District Court for the Southern District of California, defendant, Richfield Oil Corporation, herein sets forth its objections to the Findings of Fact, Conclusions of Law, and Final Judgment herein as proposed by the plaintiff and filed with the Court herein on July 23, 1951.

I

OBJECTIONS TO PROPOSED FINDINGS OF FACT

A. Objections to Particular Findings of Fact as Proposed by Plaintiff.

1. Defendant objects to Finding 4 B containing the defi-
[fol. 319] nition of the term "independent operator" on the ground and for the reason that the same fails to distinguish between:

(a) 337 and 3-C service station dealers who are engaged in business in stations owned by them or leased by them from parties other than defendant and who constitute a legitimate market for and are the subject matter of competition between defendant and its competitors; and

(b) L.O. service station operators who have undertaken the operation of defendant's L.O. service sta-

tions under the terms and conditions of defendant's Form 542 written lease (Pl. ex. 1-G) and under the oral conditions imposed by defendant and which operators are not a legitimate market for defendant's competitors nor the subject matter of competition between defendant and defendant's competitors.

The use of the term "independent operator" throughout the proposed Findings of Fact and Conclusions of Law to refer indistinguishably to both the L.O. operators on the one hand and the 337 and 3-C dealers on the other will mislead and confuse the United States Supreme Court in its review of the evidence since the word "operator" was used by the witnesses at the trial with reference only to the L.O. operators and not to the dealers in the 337 and 3-C stations.

2. Defendant objects to that portion of Finding 4 D which states that "automotive accessories • • • are sold by Richfield or Richfield's authorized distributors to independent operators" on the ground and for the reason that said Finding is misleading in its failure to take into account the undisputed evidence that Richfield makes direct sales to only 36 service stations (Stip. of Facts, Def. ex. L; Pl. ex. 26-A, pp. 113-116, inc.) out of a total number of service stations as of December 31, 1950 in excess of 2,900. (Def. ex. M-4)

[fol. 320] 3. Defendant objects to that portion of Finding 4 E, to wit, "the sale and distribution of which are handled by or arranged for at service stations by Richfield" on the ground and for the reason that the language so quoted is unintelligible and contrary to the evidence.

4. Defendant objects to that portion of Finding 5 (p. 3, 11. 23-24) which states "Richfield has entered into three basic types of arrangements with independent operators relating to the operation of service stations in the Western area" on the ground and for the reason that the same is contrary to the uncontradicted evidence.

Richfield's "arrangements" with service station dealers of the 337 and 3-C stations do not relate "to the *operation* of service stations" but relate to the sale of petroleum products. On the other hand Richfield's "arrangements" with the L. O. operators do relate to the *operation* of the L.O. service stations.

5. Defendant objects to that portion of Finding 5 (p. 3, 11. 25-26) which states that "these three arrangements are based on various written and oral agreements and understandings" on the grounds and for the reasons:

(a) That the language "are based on" is uncertain and unintelligible, and

(b) That the reference to "oral agreements and understandings" is clearly erroneous and is unsupported by the evidence.

6. Defendant objects to that portion of Finding 5 (p. 4, 11. 4-5) which states that it is pursuant to the written lease that possession of an L.O. station is turned over to the operator.

This objection is made on the ground and for the reason that said Finding is contrary to the uncontradicted evidence that the L.O. operator is permitted the occupancy of Richfield's L.O. stations pursuant to both the written L.O. lease and the concurrent oral instructions concerning de- [fol. 321] tailed method and manner of operations and the reservation by Richfield of the right to control and supervise the same.

7. Defendant objects to that portion of Finding 5 (p. 4, 11. 9-10), to wit, "but it has at all times in legal effect been a lease as distinguished from a license".

This objection is made upon the ground and for the reason that the quoted language is not a Finding of Fact but is a Conclusion of Law.

8. Defendant objects to that portion of Finding 5 consisting of the sentence commencing in line 32 on page 4, on the grounds and for the reasons:

(a) That the proposed Finding is clearly erroneous in that it implies that a Sales Contract *and a Painting Agreement* are made with each 337 dealer. This is not supported by the evidence and is contrary to the Stipulation of Facts (Def. ex. L; Pl. ex. 26-A, pp. 28-29). For example, as of December 31, 1950, a Painting Agreement was made concurrently with the Sales Contract with only 853 out of a total of 1,361 stations of the 337 type; and

(b) That the proposed Finding fails to state, similarly to other portions of Finding 5, that the printed forms of Sales Contract and Painting Agreement were revised from time to time during the period of their use up to the present time.

9. Defendant objects to the last sentence of Finding 5 (p. 5, 11. 4-8, inc.) on the grounds and for the reasons that the same is clearly erroneous in the following respects:

(a) In so far as the proposed Finding pertains to the L.O. stations, it is the uncontradicted evidence that there is no oral agreement between Richfield and [fol. 322] the operator of any L.O. station; but that on the contrary each L.O. operator is *instructed* orally with respect to the various and detailed requirements imposed by Richfield as conditions upon the L.O. operator's occupancy of Richfield's station.

(b) In so far as the proposed Finding pertains to the 3-C and 337 dealer stations, there is no evidence whatsoever of any oral agreement between Richfield and any 337 or 3-C dealer of any such station.

10. Defendant objects to the last sentence of Finding 6 (p. 5, 11. 19-23) on the ground and for the reason that the same is contrary to the uncontradicted evidence to the effect that there is no oral contract or understanding between Richfield and the operator of any L.O. station, either for the purchase of petroleum products or for any of the other phases of the manner of the operation of the L.O. station; such matters being in the nature of oral conditions of the operator's continued occupancy of the station.

11. Defendant objects to that portion of Finding 9 (p. 6, 11. 19-20) to wit: "and contained the clauses usually found in leases".

Such objection is made on the ground and for the reason that if the same is a Finding of Fact, there is no evidence whatsoever in the record to support the same. There is no evidence in the record of what clauses are usually found in leases of real property.

12. Defendant objects to the second sentence of Finding 10 (p. 10, 11. 21-23) on the ground that the same is misleading and a distortion of the evidence.

The reason for such objection is that there is no evidence that the operator's investment is "generally" in amounts from $1,000 to $8,000, there being only one instance of an extraordinary nature where the operator purchased pe- [fol. 323] troleum products, TBA and movable tools to the extent of $8,000. (Tr. p. 1480) Furthermore, the Finding is unfair unless it states, in accordance with the uncontradicted evidence, that the bulk of any such "investment" consisted of merchandise.

13. Defendant objects to the portion of Finding 10 (p. 10, 11. 28-39) purporting to state that as a general practice the L. O. operator offers bonuses to his customers in the form of "Green Stamps" which are paid for by the operator. Only one witness out of twenty-four L. O. operators who testified at the trial referred to the use of Green Stamps and he discontinued the use of the same when requested so to do by Richfield. (Tr. p. 1044)

14. Defendant objects to that portion of Finding 10 appearing in lines 30 to 32 on page 10 on the ground and for the reason that the statement concerning responsibility is not a Finding of Fact but is a Conclusion of Law; and that even as a Conclusion of Law it would be erroneous and contrary to law.

15. Defendant objects to that portion of Finding 10 (commencing in line 32 of page 10 and continuing to line 3 of page 11) which states that the L. O. operator pays Richfield for sponsored automotive products "sold to him by Richfield either directly or through the Richfield TBA distributor".

The objection is made for the same reasons as stated above in objection #2.

16. Defendant objects to the last sentence of Finding 10 (p. 11, 11. 6-9) on the grounds and for the reasons:

(a) That the same is argumentative and not a Find ing of Fact; and

(b) That to the extent that it is a Finding of Fact, it is contrary to the uncontradicted evidence that the L. O. operators are uniformly informed and instructed, prior to their occupancy of the stations, that all good will is that of the defendant and that there is no intan-

[fol. 324] gible factor of good will which the operator may develop or sell to any successor operator.

17. Defendant objects to that portion of Finding 11 (p. 11, 11. 10-11) which refers to "or other compensation" on the ground that the same is contrary to the uncontradicted evidence.

Defendant's reason for this objection is that the evidence shows clearly Richfield's practice of compensating the L.O. operators for losses of margin during price wars. (See Def. ex. F and Tr., pp. 601; 1708-1710; 1893)

18. Defendant objects to Finding 12 to the extent that the same refers to oral agreements and understandings, upon the grounds and for the reasons stated in objection #10.

19. Defendant objects to the first sentence of Finding 12 on the following grounds and for the following reasons:

(a) The reference to the "illegal provisions" is a Conclusion of Law and not a Finding of Fact; and

(b) The Finding that the 24-hour cancellation clause was for the purpose of enforcing Richfield's control of the petroleum products and automotive accessories handled at the station is a part truth only, it being the uncontradicted evidence that the 24-hour clause was used for the purpose of controlling a multitude of phases of the operation and maintenance of the L. O. stations, only one limited phase of which was the type of products sold therein. (Tr. 1711-12; 1935; 1944)

20. Defendant objects to the second and the third sentences of Finding 12 (p. 11, 11. 22-27) on the ground that the same are clearly erroneous.

Defendant's objection is for the reason that there is no testimony whatsoever in the record to support such Find- [fol. 325] ings, and such Findings are contrary to the uncontradicted evidence.

21. Defendant objects to that portion of Finding 12 (p. 11, 11. 31-32) that "such 24-hour cancellation provision was in fact resorted to and exerted in enforcing the oral agreement and understanding mentioned in paragraphs 5 and 6" on the ground and for the reason that the same is

clearly erroneous and contrary to the evidence in the following respects:

(a) There is no oral agreement between Richfield and the L. O. operator;

(b) The concellation provision was resorted to not for the purpose of "*enforcing*" the oral conditions of the L. O. tenancy but for the purpose of *terminating* the same; and

(c) The cancellation provisions were resorted to not only because of violation of instructions concerning the handling of Richfield's petroleum products or approved automotive accessories, but for violation of various other conditions of the L. O. operator's occupancy.

22. Defendant objects to the penultimate sentence of Finding 12 unless the reference therein made to automotive accessories and other equipment be expressly limited to *unapproved* automotive accessories or *unapproved* service station tools and equipment.

This objection is made upon the ground and for the reason that the proposed Finding is contrary to the evidence and ambiguous.

23. Defendant objects to that portion of Finding 13 (p. 12, l. 18) to wit: "and usually at substantially the same specified rental" on the ground and for the reason that there is no testimony or evidence to support such Finding.

24. Defendant objects to the last sentence of Finding 13 (p. 12, ll. 26-30) on the ground that the same is clearly erroneous.

[fol. 326] Defendant's reason for such objection is that such proposed Finding is not supported by any evidence whatsoever and is contrary to the plain provisions of the Sales Contract, and is contrary to the evidence.

25. Defendant objects to the first sentence of Finding 14 beginning on line 31 on page 12 and extending through line 7 on page 13, on the grounds that the same is contrary to the uncontradicted evidence as to the use of said agreements as set forth in the Stipulation re introduction of certain evidence (Def. ex. A, l. 6, p. 4 to l. 11, p. 5).

Defendant's reason for such objection is that such portion of Finding 14 is misleading and gives the erroneous impression that defendant used a form of contract calling for the sale of the dealer's "requirements" at all times from 1945 to the present time; whereas, in truth and in fact, defendant Richfield used such type of contract only until August, 1948, at which time it discontinued such use on the advice of its legal counsel promptly following the decision by Judge Yankwich in the case of *United States* v. *Standard Oil Company of California*, and in order to comply with the principle of law there announced. It is likewise provided in the Stipulation of Facts (Def. ex. A) that Richfield immediately negotiated for the modification of all of such "requirements" contracts then in effect and has succeeded in amending all of them with the exception of four.

26. Defendant objects to the last sentence of Finding 14 (p. 13, 11. 8-9) on the grounds that the same is misleading and a distortion of the evidence in so far as it states as to term: "which may be as long as twenty years in duration".

The reason for such objection is that there is only one instance of an extraordinary nature where the term of such 3-C transaction extended for as long as twenty years, (Tr. 1089—Colmery transaction) and the twenty year duration [fol. 327] in that transaction was shown to have been required not by Richfield but by the 3-C dealer, Mr. Colmery.

27. Defendant objects to Finding 16 to the extent that it fails to state (in a manner comparable to the statement in Finding 17) that the form of Sublease represented by plaintiff's exhibit 4-A was used by Richfield only during the period from November 1945 to August of 1948.

This objection is made upon the ground and for the reason that, without such qualification, Finding 16 is ambiguous and misleading.

28. Defendant objects to Findings 16 and 17 on the grounds that said Findings refer to the change in paragraph 12 in the form of Sublease represented by exhibits 4-A and 4-D, respectively, but make no reference to the changes in paragraph 3 of such respective forms of Sublease. This objection is made upon the ground and for the reason that, without reference to such additional change in said form of Sublease, the Finding is misleading as to

the purpose intended to be accomplished by defendant by the alteration of the form in August of 1948.

29. Defendant objects to that portion of Finding 19 contained in the sentence starting in line 9, on page 17, on the following grounds:

(a) The use of the word "required" is a distortion of the testimony and gives the implication that Richfield has imposed some "compulsion on the 3-C dealer, which such implication is not supported by any evidence whatsoever.

(b) The statement that the quantities are "determined by Richfield" is a distortion of the evidence and bears the inference and implication that the quantities are fixed by Richfield alone rather than being the sub- [fol. 328] ject of negotiation by Richfield and the 3-C dealer, which latter fact is the only one which is supported by the evidence.

(c) The statement that the quantities are "usually fixed by Richfield at 80% of the anticipated requirements of the independent operator" is contrary to the evidence. The uncontradicted evidence is that Richfield's salesmen were instructed that in the use of said form they were to negotiate with the 3-C dealer for the quantity which the dealer desired to buy with the qualification that the dealer was not to be permitted to obligate himself to buy a quantity in excess of 85% (subsequently reduced to 75% in early part of 1950) (Tr. pp. 1844; 1873) of the dealer's past known purchases of such products.

Defendant's reason for the foregoing objections is that the portion of Finding 19 above referred to is not supported by the evidence and is contrary thereto.

30. Defendant objects to the last sentence of Finding 19 (p. 17, 11, 13-16) on the grounds and for the reasons that the same is not supported by any evidence whatsoever and is contrary to all of the evidence concerning both the purpose and effect of the quantity provision in exhibit 4-C.

31. Defendant objects to all of Finding 20 on the ground and for the reason that the same is clearly erroneous and that there is no testimony or evidence whatsoever of any

oral agreement or understanding between Richfield and any 3-C dealer relating to the purchase of automotive accessories or to any other matter; and that such Finding is contrary to the evidence.

32. Defendant objects to those portions of Finding 21 wherein reference is made to oral agreements and understandings with 337 dealers on the ground and for the reason that there is no evidence whatsoever of any oral agree-[fol. 329] ment or understanding between Richfield and any 337 dealer.

33. Defendant objects to that portion of Finding 23 which states that no substantial change was made in the written form of Sales Contract (Pl. ex. 5) until August 1948. The objection is made on the ground and for the reason that this is contrary to the uncontradicted evidence and the Stipulation of Facts (Def. ex. A), which shows that commencing in June of 1938 a form of Sales Contract (Pl. ex. 5-B) was put into effect, which form eliminated the one year minimum term contained in plaintiff's exhibit 5 which is referred to in Finding 22.

34. Defendant objects to that portion of Finding 24 commencing with the words "and the minimum requirement provisions", in line 16 of page 20, on the following grounds and for the following reasons:

(a) The statement that the minimum requirement provisions "were fixed and determined by Richfield" is uncertain, ambiguous and unintelligible and contrary to the evidence.

(b) The statement that the practical and intended purpose and effect of said provisions has been to require the 337 dealer to secure his entire requirements of petroleum products from defendant is not supported by any evidence whatsoever and is contrary to clear and uncontradicted evidence.

35. Defendant objects to the first sentence of Finding 25 to the extent that the same states that the Sales Contract was "usually accompanied" by a Painting Agreement. The objection is on the ground and for the reason that said statement is contrary to the Stipulation of Facts (Def. ex. L and Pl. ex. 26-A, pp. 28-29). (See objection # 8.)

36. Defendant objects to the second sentence of Finding [fol. 330] 25 on the ground and for the reason that the paraphase and interpretation of the Painting Agreements are contrary to the language and clear meaning of such Painting Agreements. Said objection is made for the reason that there is nothing in any of the forms of Painting Agreement which provides for the payment of painting costs by the service station dealer "in the event the Sales Contract was cancelled for any reason" nor is there any provision giving defendant the right to control the placing or removal of advertising signs, etc. "on the premises" of the 337 station; and for the additional reason that the proposed Finding is a deliberate distortion of the evidence and of the terms of the Painting Agreement.

37. Defendant objects to all references in Finding 26 to any oral agreements or understandings on the ground and for the reason that there is no evidence of any oral agreement or understanding of any nature between Richfield and any one or more of the 337 dealers who operate any of the 1,361 stations of that type.

38. Defendant objects to those portions of Finding 26 which state that the purpose or intended effect of the Painting Agreement was to secure "an exclusive Richfield outlet" or to compel the dealer to purchase his requirements of petroleum products from or through Richfield or to shut out competition.

The objection is on the ground and for the reason that there is no evidence whatsoever of any such purpose or intent; but on the contrary the uncontradicted evidence (Tr. 1759 et seq.) is:

(a) That defendant's competitors offer to paint the stations of the potential customers, i.e., the 337 dealers, without cost and that defendant must do the same in order to meet the competition of such competitors.

(b) That the 337 dealers demand the painting of their station without cost to them as a condition to [fol. 331] purchasing any petroleum products from defendant; and

(c) That under such circumstances, defendant is willing to paint the service station of the 337 dealer without charge and without the right to collect for the

cost of such painting, excepting in the limited circumstances specified in the Painting Agreement.

39. Defendant objects to those portions of Finding 26 which state that the Painting Agreements had the effects of compelling the 337 dealer to purchase his requirements of petroleum products and automotive accessories from or through defendant and of shutting out all competition for such business of the 337 dealer. The objection is made on the grounds and for the reasons that there is no evidence whatsoever to support such Finding and that the evidence is clearly contrary thereto, to wit:

(a) That 75% of all 337 dealers handle, display and advertise non-Richfield lubricating oils and greases and also handle, display and advertise automotive accessories not approved or sponsored by defendant (Tr. 1897); and

(b) That although the 337 dealers have not handled non-Richfield gasoline during the time they handled Richfield gasoline, nevertheless this fact resulted from the desire of the 337 dealers; and further that 337 dealers very often discontinued all purchases of Richfield gasoline from defendant prior to the expiration of their 337 Sales Contract (Tr. 1773); and

(c) That during the period from January 1, 1946 to December 31, 1950, out of a total of 514 of such accounts lost, 407 (or approximately 80% thereof) were lost prior to the expiration of the Sales Contract and approximately 75% of such 407 accounts so lost in such manner had accompanying Painting Agreements. [fol. 332] (Def. ex. X) Such testimony can bear no inference other than the fact that the existence of the Painting Agreement did not have the effects asserted in the proposed Finding.

40. Defendant objects to that portion of Finding 27 to the effect that there are any oral contracts or agreements with any of the service station dealers or operators referred to in the Findings of Fact upon the grounds and for the reasons stated in objections ## 10 and 37.

41. Defendant objects to that portion of Finding 27 which states that the operator of any L. O. station is an "inde-

pendent businessman". This objection is made upon the grounds and for the reasons:

(a) That the same is not a Finding of Fact but a Conclusion of Law;

(b) That to the extent that it is a Finding of Fact, it is not supported by the evidence and is contrary to the evidence; and

(c) Upon the further grounds and reasons stated in support of defendant's objection #1 above.

42. Defendant objects to Finding 28 in its entirety (excepting to the extent that it refers to defendant's L. O. stations) on the ground and for the reason that it is clearly erroneous, that it is not supported by the evidence and that it demonstrates a deliberate and calculated purpose to distort the evidence and any inference that may be drawn from it. Defendant's reasons for such objection are:

(a) That the Finding is designed to give the erroneous impression that any policy or practice of defendant which occurred in 1938 has continued without change or interruption up to the date of the trial; whereas on the contrary, the only evidence in support [fol. 333] of the Finding is confined to plaintiff's exhibit 9, which is a letter dated June 16, 1938, and testimony of isolated instances occurring thereafter and not later than 1941, with the sole exception that during the period from 1945 until the decision by Judge Yankwich in *United States* v. *Standard Oil Company of California* in the summer of 1948, the defendant's Sales Contract with the 3-C dealers provided for the sale of the dealer's entire requirements of petroleum products; and

(b) That subsequent to 1941, although defendant did not *solicit* the sale of gasoline to the less than 2% of independent service stations which were operated on a "split pump" basis, there is no evidence that Richfield ever refused the request of any of such "split pump" dealers to sell gasoline to him, nor that Richfield ever discontinued the sale of gasoline to any dealer on the ground or for the reason that any such dealer desired to operate a "split pump" station or

commence such operation; nor is there any evidence that Richfield terminated any Sales Contract excepting only after the particular dealer involved discontinued entirely the purchase of Richfield gasoline. The undisputed testimony is that Richfield did not engage in any of such practices at any time after 1941 (Tr. 1780, et seq.; 1848, et seq.); and

(c) On all the grounds and for all the reasons designated in support of defendant's objections ##37 and 39.

43. Defendant objects to Finding 29 in so far as it relates to the 1,361 stations of the 337 type and to the 261 stations [fol. 334] of the 3-C type on the ground and for the reason that in those respects the Finding is clearly erroneous and there is no evidence whatsoever in support thereof.

44. Defendant objects to Finding 30 in so far as it refers to oral agreements on the grounds and for the reasons specified in defendant's objections ##10, 31 and 37.

45. Defendant objects to Finding 32 on the following grounds and for the following reasons:

(a) The reference to exhibits 4-A and 4-B in connection with the numbers of 3-C operator leases and 3-C Sales Contracts in existence as of December 31, 1950, is erroneous and contrary to the Stipulation of Facts, defendant's exhibit A. The total number of 261 3-C service stations are all on forms covered by plaintiff's exhibits 4-D and 4-C as revised in the fall of 1948, with the sole exception of four 3-C dealers who would not revise their former contracts.

(b) The reference to exhibit 5-B in connection with the 1,361 Sales Contracts on Form 337 in existence as of December 31, 1950, is erroneous and is contrary to the Stipulation of Facts, defendant's exhibit A, which shows that Sales Contracts on Form 5-B were amended by the form represented by plaintiff's exhibit 5-I.

(c) The reference to exhibit 5-C in connection with the 1,094 Painting Agreements in effect as of December 31, 1950, is erroneous and is not supported by any evidence. Exhibit 5-C has not been in use since it was

revised and reprinted in August of 1948. (See Stipulation of Facts, Def. ex. A.)

46. Defendant objects to Finding 33 in its entirety upon [fol. 335] the grounds and for the reasons stated in defendant's objections ## 10, 31 and 37.

47. Defendant objects to Finding 34 in the following respects:

(a) Objects to all references to oral agreements upon the grounds and for the reasons stated in defendant's objections ## 10, 31 and 37.

(b) Objects to the figure of $43,174,243 as a characterization of "business done between Richfield and the independent service station operators" upon the ground and for the reason that said figure includes the total volume of automotive accessories described in Finding 37, only a minute fraction of which was sold by Richfield to service station dealers.

48. Defendant objects to the second sentence of Finding 36 on the ground and for the reason that the figures therein do not relate to automotive accessories distributed to the service stations therein referred to. (See Def. ex. L, Table XII, and Pl. ex. 26-A, p. 118.)

49. Defendant objects to the second sentence of Finding 37 upon the grounds and for the reasons specified in defendant's objection # 2.

50. Defendant objects to that portion of Finding 37 appearing in lines 21 to 32 on page 26 upon the ground and for the reason specified in defendant's objection # 48.

51. Defendant objects to Findings 31, 32, 33, 34, 35, 36 and 37 upon the ground that the use of comparative statistics in the showing of the increase of numbers of service stations and the increase in volume of sales between December 31, 1938, and December 31, 1950, is a distortion and unfair unless there is concurrently made a Finding of the increase in the number of service stations generally and the [fol. 336] increase in volume of sales of petroleum products and automotive accessories throughout the industry, all as shown by the evidence, and particularly by defendant's exhibits M-4 to M-13, respectively.

52. Defendant objects to that portion of Finding 39 which refers to oral agreements on the ground and for the reasons stated in defendant's objections ## 10, 31 and 37.

53. Defendant objects to that portion of Finding 39 which states that the transactions "prevent the dealer from dealing with competitive suppliers". The objection is made on the ground and for the reason that there is no evidence in support of such Finding in so far as the same pertains to the 3-C or 337 dealers.

54. Defendant objects to that portion of the last sentence of Finding 43 to the effect that the TBA distributor is "required to report instances in which said operators are selling or acquiring automotive accessories from or through sources other than Richfield" upon the ground and for the reason that there is no evidence whatsoever to support such Finding.

55. Defendant objects to those portions of Finding 45 which refer to oral agreements with the operators of service stations, which objection is made upon the grounds and for the reasons specified in defendant's objections ##10, 31 and 37.

56. Defendant objects to the last sentence of Finding 45 in so far as the same relates to any 337 or 3-C stations. Said objection is made upon the ground and for the reason that there is no evidence to support any such Finding, except in so far as the same relates to L.O. stations, and that said Finding is contrary to the clear and uncontradicted evidence.

57. Defendant objects to Finding 46 in its entirety

(a) Upon the grounds and for the reasons specified in defendant's objections ## 10, 31 and 37;

(b) Upon the ground and for the reason specified in [fol. 337] defendant's objection #56;

(c) Upon the ground that in so far as the L.O. stations are concerned they do not constitute a legitimate market for the products of Richfield's competitors.

58. Defendant objects to Finding 47 in its entirety upon the grounds and for the reasons specified in defendant's objection #57.

59. Defendant objects to Finding 48 in its entirety upon the grounds and for the reasons specified in defendant's objection #57.

[fol. 338] B. Objections Based Upon *Failure to Make* the Following *Findings of Material Facts Re the L.O. Stations* in Accordance with the Uncontradicted Evidence, Which Objections are Made Upon the Ground and for the Reason that they are Material to the Issues Raised by the Pleadings.

1. Re Richfield's business purpose in the acquisition and maintenance of the L.O. stations:

(a) Richfield's business purpose and intent in the acquisition and maintenance of L.O. stations has been to provide a stable outlet for the petroleum products produced by it (Tr. 1687);

(b) The intense competition in Richfield's marketing area for the business of independent service station dealers who own or lease their respective service stations is such that, notwithstanding Richfield's constant solicitation of such business, Richfield cannot depend thereon as a stable outlet for the sale of its petroleum products (Tr. 1687-1689);

(c) Richfield's need for service station outlets has greatly increased since the termination of World War II due to the following factors (Tr. 1689-1692):

(i) During World War II Richfield's refinery capacity for the manufacture of motor gasoline was increased 32.5% (or the equivalent of 10,705 barrels of motor gasoline per day, or approximately 13,500,000 gallons per month) as the result of the installation by Richfield at the request of the United States Government of additional refinery facilities at an expenditure of approximately $20,000,000 (Def. [fol. 339] ex. AC, AE, AE-1, AE-2, AE-3 and AF);

(ii) Immediately following V-J Day in the fall of 1945, the United States Government reduced its purchases of gasoline from Richfield from 17,000 barrels per day to 2,000 to 3,000 barrels per day (Tr. 2039);

(iii) Richfield discovered new oil fields (Tr. 1691);

(iv) There was a substantial increase in the demand for petroleum products due to vast increase in population on Pacific Coast (Tr. 1691 and Def. ex. M-13);

(d) To satisfy such need for outlets for its production of petroleum products, Richfield during the period following 1946 acquired properties by lease and purchase, 90% of which were unimproved and vacant sites; and Richfield constructed service stations thereon. As of December 31, 1950, Richfield's investment in service station properties and improvements thereon was approximately $19,500,000 (Tr. 1692-1697, Def. ex. AB);

(e) Notwithstanding such acquisition and investment, the number of Richfield's L.O. service stations has not increased during the past decade; and Richfield had fewer L.O. service stations as of December 31, 1950, than it had as of December 31, 1941 (Def. ex. M-4, Tr. 1697);

(f) As of December 31, 1950, 1,092 L.O. stations, representing in excess of 81% of the total number of 1,343 L.O. stations owned or leased by Richfield, were self-created stations, i.e., stations built by Richfield or [fol. 340] by the property owners under agreement with Richfield on sites which had never theretofore been used or equipped as service stations handling any petroleum products.

2. Re Richfield's relationship with L.O. operators.

(a) In selecting operators for its L.O. stations, Richfield made it a practice to investigate their character, reputation, family background and like qualities, and has interviewed various applicants and has required the use by them of application forms to secure such information (Tr. 1698-1699, Stip. of Facts, Def. ex. A);

(b) Few, if any, of the L.O. operators had been independent dealers established in business in service stations owned or leased by them prior to becoming operators in Richfield's L.O. stations (Tr. 1698-1699);

(c) Prior to installation in one of Richfield's L.O.

stations, the prospective operator is thoroughly instructed and informed of Richfield's requirements and practices concerning the following matters (Tr. 1920-1935):

(i) Richfield's requirement that operator and his helpers wear approved Richfield uniforms;

(ii) Richfield's requirement of a minimum crew of employees and helpers;

(iii) Richfield's requirement as to the hours the station is to remain open;

(iv) Richfield's requirement of the personal cleanliness and appearance of operator and his helpers; [fol. 341] (v) Richfield's requirement of use of specified pump island procedure and manner of dealing with public;

(vi) Richfield's requirement of the handling of Richfield products exclusively;

(vii) Richfield's requirement of the securing of approved TBA from Richfield's local distributor if the latter is able to supply the operator;

(viii) Richfield's instructions as to how to order petroleum products;

(ix) Richfield's instructions concerning the procedure in use of Richfield's credit cards;

(x) Richfield's instructions against display of unapproved or competitive signs;

(xi) Richfield's instructions to operator to attend training meetings;

(xii) Richfield's practices whereby Richfield's merchandiser will from time to time, not less frequently than once every sixty days, inspect station and operator's maintenance and operating methods and instruct him on any matters determined to be corrected;

(xiii) Richfield's requirement that incoming operator acquire from outgoing operator Richfield petroleum products, TBA items approved by Richfield and service station tools approved by Richfield and that incoming operator not acquire other items from outgoing operator.

(xiv) Richfield's practice and obligation in assisting operator in disposing of such approved items of petroleum products, TBA and equipment on term-
[fol. 342] ination of operator's tenure;

(xv) Richfield's practice and instructions that operator does not acquire or develop any good will and shall not be permitted to charge for any intangible value to his successor on termination of his tenure;

(xvi) The existence of the explanation of 24-hour termination clause in the Form 542 lease which is available to either party, and Richfield's reason for requiring the same as protection of its property, investment and merchandising program.

(d) Upon installation of L.O. operator, Richfield's merchandiser instructs him for a minimum of five days; and thereafter the merchandiser calls on the operator from two days a week to once a month, using an itemized form as a training guide; and every sixty days the merchandiser checks in detail the compliance with instructions on a printed form (Tr. 1937-1939, Def. exs. C and V);

(e) L. O. operators are at times promoted from one station to another or to the Company's Marketing Department (Tr. 99, 1364; 1937);

(f) It has been Richfield's practice that the following circumstances have warranted Richfield's terminating the tenure of an L.O. operator, i.e., insufficient crew, failure to maintain sufficient inventory, operation of a dirty station, failure to maintain sufficient operating hours, absentee operation or failure to carry Richfield products exclusively (Tr. 1943-1944);

(g) Richfield extends financial assistance to L.O.
[fol. 343] operators as follows:

(i) Richfield subleases to L.O. operators fully equipped service stations (excepting only small tools and lubricating equipment) at a rental substantially less than the fair rental value thereof (Tr. 1704-1705, 1981-1982). As to stations leased rather than owned by Richfield, Richfield pays rentals to the property owners substantially in excess of those

collected from the L.O. operators and in this respect absorbs a rental expense of approximately one-third of the total rentals paid (Def. ex. AA);

(ii) Richfield has maintained a practice of reducing the L.O. operator's rentals whenever the operator has experienced difficulty in developing a satisfactory volume of business (Tr. 1699-1701);

(iii) Richfield subsidizes L.O. operators during "price wars" to the extent of their full margin of profit if they reduce prices to meet competition (Tr. 1708-1710; 1817; Def. ex. F);

(iv) Richfield has made a practice of loaning money to L.O. operators so that they can carry adequate inventories of petroleum products (Tr. 1703 et seq.);

3. In light of the facts enumerated in proposed Findings 1 and 2 above, the L.O. operators are not independent businessmen, (whether or not they be determined to be independent contractors); and the trade and custom of the L.O. operators is Richfield's trade and custom; and the L.O. operators do not constitute a legitimate market for Richfield's competitors.

[fol. 344] 4. Restraints imposed by Richfield upon the petroleum products and automotive accessories handled by the L.O. operators in Richfield's L.O. stations are not unreasonable restraints of trade because of the following facts which are found to exist:

(a) Richfield does not have a position of dominating power in the petroleum products industry or in the automotive accessories industry in the Western area (Def. exs. M-4 to M-12, inc., and Def. ex. Z);

(b) The Form 542 sublease used with each L.O. operator is not unreasonable in duration, being terminable by either party thereto on 24-hours' notice (Pl. exs. 1-B, 1-D, 1-E and I-G);

(c) The public interest has not been harmed or adversely affected (Def. ex. M-13);

(d) The effect of Richfield's contracts with its L.O. operators has not been to unreasonably restrict the

opportunity of Richfield's competitors to market their products;

(e) In excess of 81% of the L.O. stations were self-created by Richfield (Def. ex. W);

(f) Richfield's actions with respect to the acquisition and maintenance of L.O. stations and the leasing thereof to L.O. operators in the manner and upon the terms described in the foregoing Findings sprang from business requirements and not from any purpose or intention of Richfield to monopolize trade or commerce or to suppress or otherwise affect competition or its competitors.

5. For the reasons and upon the grounds stated in proposed Finding 4, Richfield's contracts with its L.O. operators do not substantially lessen competition or tend to create a monopoly in any line of commerce;

[fol. 345] 6. If the business of the L. O. operators be considered a legitimate market for Richfield's competitors, nevertheless the business of said L. O. stations is not a substantial share of the line of commerce affected (Def. exs. M-4 to M-12, inc. and Def. ex. Z).

[fol. 346] C. Objections based upon *failure to make* the following *findings of material facts re the 337 and 3-C dealer stations* in accordance with the uncontradicted evidence, which objections are made upon the ground and for the reason that they are material to the issues raised by the pleadings.

1. Richfield had in effect as of February 28, 1951, a total of 1,640 Sales Contracts with 337 and 3-C dealers and the following Table segregates said contracts into four classes on the basis of the ratio which the quantity of gasoline that the dealer obligated himself to purchase under his Sales Contract bears to such dealer's average monthly purchases for the year preceding the date of the contracts. Column (1) specifies the ratio, column (2) specifies the number of contracts falling in each ratio group and column (3) specifies the percentage of total contracts in each ratio group.

(1) Contract groups	(2) Number of sales contracts	(3) Percent each group bears to total number of sales contracts
Group A—Less than 75%	408	25%
Group B—75% to 79%, inc.	458	28%
Group C—80% to 89%, inc.	560	34%
Group D—90% and over	214	13%

(def. ex. Y)

2. During each year from 1938 to and including 1950, Richfield had in effect a number of Sales Contracts with 337 dealers; some of which were not accompanied by a Painting Agreement (the numbers of which appear in column # 1 below); some of which were accompained by a Painting Agreement executed concurrently with the Sales Contract (the numbers of which appear in column # 2 below); and some of which were accompanied by a Painting Agreement executed subsequent to the execution of the Sales Contract (the numbers of which appear in column # 3 below).

(See Table on following page.)

[fol. 347] December 31st of	(1)	(2)	(3)
1938	109	349	98
1939	119	380	107
1940	121	385	109
1941	139	444	125
1942	93	298	84
1943	119	379	107
1944	123	394	112
1945	173	552	156
1946	205	656	185
1947	208	665	188
1948	223	712	201
1949	236	755	213
1950	267	853	241

(Def. ex. L and Pl. ex. 26-A, pp. 28-29)

3. During the period from January 1, 1946 to December 31, 1950, defendant lost the business of 514 dealers who were purchasing petroleum products from defendant under the provisions of Form 337 Sales Contracts. Out of said 514 accounts so lost 407 (or approximately 80% thereof) were lost prior to the expiration of the Sales Contract; of the 407 lost prior to the expiration of the Sales Contract 303 had Painting Agreements in effect and 104 had no Painting Agreements in effect; of the 107 of said accounts which were lost at the expiration of the contract 81 had Painting Agreements in effect and 26 did not have Painting Agreements in effect at the time of loss. (Def. ex. X)

4. Richfield's contracts and agreements with the 337 dealers and the 3-C dealers are not unreasonable restraints of trade because of the following facts which are found to exist:

(a) The contracts provide for the purchase by the respective dealers of specified quantities of petroleum products and do not prevent or preclude any of such [fol. 348] dealers from purchasing additional quantities of the same products from any and all competitors of defendant.

(b) Not less than 75% of all of the 337 and 3-C dealers handle, openly advertise and display, and sell non-Richfield petroleum products and non-approved automotive accessories.

(c) Richfield does not have a position of dominating power in the petroleum products industry or in the automotive accessories industry in the Western area. (Def. exs. M-4 to M-12, incl. and Def. ex. Z)

(d) The 337 Sales Contract is not unreasonable in duration, being terminable by either party thereto on thirty days' written notice. (Pl. exs. 5-D and 5-G)

(e) The public interest has not been harmed or adversely affected. (Def. ex. M-13)

(f) The effect of Richfield's contracts with the 337 dealers has not been to unreasonably restrict the opportunity of Richfield's competitors to market their products.

(g) The effect of Richfield's contracts with the 3-C dealers has not been to unreasonably restrict the op-

portunity of Richfield's competitors to market their products.

(h) Richfield's actions with respect to the 337 dealers and the 3-C dealers sprang from business requirements and not from any purpose or intention of Richfield to monopolize trade or commerce or to suppress or otherwise affect competition or its competitors.

5. For the reasons and upon the grounds stated in proposed Finding 4, Richfield's contracts with the 337 dealers [fol. 349] do not substantially lessen competition or tend to create a monopoly in any line of commerce.

6. For the reasons and upon the grounds stated in proposed Finding 4, Richfield's contracts with the 3-C dealers do not substantially lessen competition or tend to create a monopoly in any line of commerce.

7. The number of contracts and the volume of business done by Richfield with 337 dealers is not a substantial share of the line of commerce affected. (Def. exs. M-4 to M-12, incl. and Def. ex Z)

8. The number of contracts and the volume of business done by Richfield with 3-C dealers is not a substantial share of the line of commerce affected.

[fol. 350] II

Objections to Proposed Conclusions of Law

1. Defendant objects to Conclusions 1 to 4, inclusive, and 6 to 11, inclusive, upon the ground and for the reason that the evidence does not support any Finding or Conclusion concerning or based upon the existence of any oral contracts, agreements or understandings.

2. Defendant objects to Conclusion 5 upon the ground and for the reasons:

(a) That the jurisdiction of this Court is based upon the Acts of Congress known as the Sherman and Clayton Anti-Trust Laws (see paragraph 1 of the complaint herein); and that any determination concerning the validity under state law or so-called federal law (other than said Sherman and Clayton Anti-Trust Laws) of the 24-hour termination clause

contained in the L.O. lease form is beyond the jurisdiction or power of this Court;

(b) That there is and can be no issue in this cause concerning the validity under state law or so-called federal law (other than the Sherman and Clayton Anti-Trust Laws) of the 24-hour termination clause contained in the L.O. lease forms;

(c) That any reference therein contained to the validity of the 24-hour termination clause under either state or federal law (other than the Sherman and Clayton Anti-Trust Laws) is erroneous and contrary to law.

3. Defendant objects to the second sentence of Conclusion 8 upon the ground and for the reason that the same is not a Conclusion of Law but rather is a Finding of Fact; and [fol. 351] upon the further ground and for the reason that as a Finding of Fact it is clearly erroneous and not supported by any evidence, excepting in so far as it relates to the L.O. stations.

[fol. 352]

III

Objections to Proposed Final Judgment

1. Defendant objects to the definitions of "independent dealer" and "automotive accessories" upon the grounds and for the reasons stated in defendant's objections to Findings of Fact hereinabove, ##A-1 and A-2.

2. Defendant objects to any and all references throughout the proposed Final Judgment to oral contracts, agreements or understandings, upon the ground and for the reason that the evidence does not support any Finding or Conclusion or Judgment concerning or based upon the existence of any oral contracts, agreements or understandings.

3. Defendant objects particularly to the reference in paragraph V of the proposed Final Judgment to "any independent dealer (including any independent dealer operating a rental outlet under a L.O., 3-C or 337 type of arrangement with defendant)".

This objection is made upon the ground and for the reason that said language is a deliberate and calculated

attempt to broaden the judgment beyond the three types of written arrangements therein described, and to include defendant's sales to so-called "uncontracted accounts" with respect to which accounts this Court has excluded all evidence as being immaterial and not responsive to any issues in this cause.

4. Defendant objects particularly to the first sentence of paragraph VI of the proposed Final Judgment which purports to enjoin defendant from exercising the 24-hour termination clause contained in the L.O. lease and to enjoin defendant from terminating any L.O. lease on less than thirty days' written notice to any L.O. operator.

This objection is made upon the ground and for the reason that such provision of the Final Judgment cannot [fol. 353] be lawfully predicated or founded upon any violation of either the Sherman or Clayton Anti-Trust Laws (even though such a violation were properly found to have occurred), but must be founded, if at all, upon an assumed violation of "state or federal law" as stated in the accompanying proposed Conclusion of Law #5. Accordingly such portion of the Final Judgment is beyond the power and jurisdiction of this Court upon the ground and for the reason stated in defendant's objection to said Conclusion of Law #5.

5. Defendant objects particularly to the second sentence of paragraph VI of the proposed Final Judgment which purports to enjoin defendant from exercising a supposed thirty-day cancellation privilege (not included in the lease) excepting and only for a breach of any of the written covenants contained in the written 542 form of lease on L.O. stations.

This objection is made upon the grounds and for the reasons:

(a) The same constitutes a deliberate and calculated attempt by the plaintiff to broaden and enlarge the Judgment and Decree of this Court beyond the scope thereof announced by this Court in its Opinion filed herein on July 2, 1951, which Opinion announces that defendant should be prohibited "from using the 24-hours' termination clause at all *to enforce its re-*

strictive conditions as to the products sold on the premises";

(b) The same constitutes a taking of defendant's property without compensation and without due process of law in that such portion of the Decree would prevent defendant from ever retaking possession of its property pursuant to its lawful contract rights, and would require defendant to continue to lease to the 1,361 L.O. operators the respective stations occupied by them for an indefinite and unlimited time in the [fol. 354] future and at a rental substantially less than the fair rental value of such stations;

(c) That said Final Judgment is unreasonable upon the grounds and for the reasons above stated.

6. Defendant objects particularly to the third sentence of paragraph VI of the proposed Final Judgment upon the ground and for the reason that the same is unreasonable and unnecessary for the effectuation of the Court's judgment.

7. Defendant objects particularly to paragraph VIII of the proposed Final Judgment to the extent that the same provides "provided, however, that the provisions of this paragraph shall not apply or operate to stay the going into immediate effect of the provisions of paragraph VI herein".

This objection is made upon the ground and for the reason that the same constitutes a deliberate and calculated attempt by the plaintiff to broaden and enlarge the Judgment and Decree of this Court beyond the scope thereof announced by this Court in its Decision and Order dated July 2, 1951, which provides in part:

> "5. In order not to deprive the defendant Richfield of the benefit of any appeal in the case, the permanent injunction to be issued shall be stayed until the expiration of six months after the Judgment shall have become final."

8. Defendant objects to the following portion of paragraph IX of the proposed Final Judgment, to wit:

> ". . . upon the written request of the Attorney General or the Assistant Attorney General, shall sub-

mit such reports with respect to matters contained in this judgment as may from time to time be necessary for the enforcement of the judgment, and . . ."

upon the ground and for the reasons:

(a) that the same is unreasonable and not required [fol. 355] for the proper enforcement of the Final Judgment; and

(b) that such provision was not included in the judgment of this Court made and entered in *United States* v. *Standard Oil Company of California*, No. 6159-Y, filed June 30, 1948.

9. Defendant objects particularly to the proposed Final Judgment on the ground that it fails to include as a provision thereof the following paragraph which was included and embodied in the final judgment by this Court in *United States* v. *Standard Oil Company of California*, No. 6159-Y, filed June 30, 1948, to wit:

"IX

Nothing contained in this judgment shall enjoin or restrain defendant from selling or contracting to sell petroleum products and/or automotive accessories including such products as are sponsored by defendant, to independent dealers on the condition that any pump or tank or other container or receptacle for such products, furnished by defendant and marked as such to an independent dealer, shall be used solely for the storing, handling or dispensing of defendant's petroleum products and to prescribe by agreement or regulations not inconsistent with the provisions of this decree, for the storage, handling or dispensing of such products."

Dated: July 27, 1951.

Respectfully Submitted, William J. DeMartini, Robert E. Paradise, by ——— ———, Attorney for Defendant.

[fol. 356] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed August 2, 1951

Findings of Fact

1. This is a suit in equity by the United States to enjoin certain practices engaged in by the defendant alleged to be in violation of Section 1 of the Sherman Antitrust Act (26 Stat. 209 (1890), 15 U. S. C. Sec. 1) and Section 3 of the Clayton Act (38 Stat. 731 (1914), 15 U. S. C. Sec. 14). The Court has jurisdiction of the subject matter and the parties. The defendant Richfield Oil Corporation, hereinafter called "Richfield," has offices, transacts business, and is found within the Central Division of the Southern District of California.

2. Richfield is a corporation organized and existing under the laws of the State of Delaware and is engaged in the business of acquiring and developing oil reserves and in producing and refining petroleum products in the State of California, and in transporting, marketing, and distributing such products in the States of California, Oregon, Washing-[fol. 357] ton, Idaho, Nevada, and Arizona. Said States will hereinafter be collectively referred to as the Western area.

3. Richfield has for many years past and is at the present time leasing and acquiring title to service station sites, and entering into contractual relationships with operators of service stations for retail outlets within the Western area.

4. Definition of terms.

A. The term "service station," as used herein, refers to a retail outlet at which petroleum products and/or "automotive accessories" manufactured or "sponsored by" Richfield are sold or distributed to the motoring public by an "independent operator."

B. The term "independent operator," as used herein, refers to the operator of a "service station" who oper-

ates said service station as an independent business enterprise and not as an employee or agent of Richfield.

C. The term "petroleum products," as used herein, refers to those products obtained or manufactured from natural gases or crude oil by various processes and sold or used as a fuel or lubricant for automotive vehicles, together with miscellaneous oils and compounds derived from natural gases or crude oil and designated for various specific uses and includes such petroleum products as are manufactured or "sponsored by" Richfield and sold by it to independent operators.

D. The term "automotive accessories," as used herein, refers to replacement parts and articles other than "petroleum products" used on or in the servicing or repairing of automotive vehicles and includes tires, tubes, batteries, spark plugs, oil filters, oil filter cartridges, fan belts, battery cables, auto lamp bulbs, fuses, windshield wipers and blades, tire repair and vulcanizing kits, anti-freeze preparations, tire chains, waxes and polishes and other like items, and includes such "auto-
[fol. 358] motive accessories" as are "sponsored by" Richfield and sold by it or Richfield's authorized distributors to independent operators.

E. The term "sponsored by," as used herein, refers to those petroleum products and/or "automotive accessories" not manufactured or produced by Richfield, but sold and distributed at service stations, the sale and distribution of which are handled by or arranged for at service stations by Richfield.

F. The term "TBA distributor" (an abbreviation for a tire, battery, and accessory distributor), as used herein, is a distributor appointed by Richfield who receives and handles the orders of independent operators fo automotive accessories within a marketing area designated by Richfield.

G. The term "bulk plant," as used herein, refers to a central supply depot for gasoline, oils, lubricants, and other petroleum products, such plant being owned and operated by Richfield or its commission agent and supplying petroleum products manufactured and produced by Richfield to service stations.

5. Richfield does not have and has not had during the period covered by the complaint, except for a few instances during World War II, any employee-operated service stations in the Western area. From March 12, 1937, at which time Richfield commenced doing business, and continuing up to the present time, Richfield has entered into three basic types of arrangements with independent operators relating to the operation of service stations in the Western area. These three arrangements are based on various written and oral agreements and understandings. (a) The first type of arrangement relates to service stations hereinafter referred to as leased-out or L-O stations. The fee of the L-O service station premises is owned by Richfield or is leased for a term of years from a party other than an independent operator. Richfield enters into a written form of lease on the L-O station with an independent operator, who subsequently enters into possession of the service station premises. The independent operator thereafter carries on the business of buying and reselling petroleum [fol. 359] products and automotive accessories to the motoring public at the leased premises. The only written agreement between Richfield and the independent operator of the L-O station is in the form of a lease from Richfield to the independent operator pursuant to which possession of the service station is turned over to the independent operator. The written lease between Richfield and the independent operator has at all times been designated a "lease" on Richfield's form 542 and is represented by plaintiff's exhibits 1, 1A to 1G, inclusive, and plaintiff's exhibit 2. The form of the written lease has been revised by Richfield at various times but it has at all times in legal effect been a lease as distinguished from a license. A slightly different form of written lease but of substantially the same character as form 542 has been entered into between Richfield and independent operators with respect to certain service stations catering to the specific needs of truckers, which lease is designated "Truck Service Station Lease," and is represented by plaintiff's exhibit 2. (b) The second type of arrangement relates to service stations hereinafter referred to as "3-C Dealer Stations," the fee of which is owned by the independent operator or which is leased by

him for a designated period from a party other than Richfield. Three written agreements are concurrently entered into between Richfield and the operator of the 3-C dealer station, namely, a lease of the service station property from the operator to Richfield; a sublease to the operator from Richfield of the same service station property; and a sales contract covering the sale of petroleum products from Richfield to the operator. The written forms of these arrangements are represented by plaintiff's exhibits 3, 3A to 3D, inclusive, and plaintiff's 4, 4A to 4D, inclusive. This form of arrangement has been employed by Richfield throughout the period covered by the complaint. These written forms of agreements have likewise been revised from time to time by Richfield during the period of their use up to the present time. (c) The third type of arrangement relates to service stations hereinafter referred to as "337 Dealer Stations," the fee of which is owned by the independent operator or which is leased by him for a designated period from a party other than Richfield. The [fol. 360] written agreements entered into between Richfield and the operator of the 337 dealer station are a "Sales Contract," and a "Painting Agreement," and are represented by plaintiff's exhibits 5, 5A to I, inclusive.

The oral agreements between Richfield and the operators of the L-O, 3-C, and 337 dealer stations are entered into at substantially the same time as the written agreements and relate to the handling by the operator at his service station of petroleum products and automotive accessories manufactured or sponsored by Richfield on an exclusive basis.

6. On March 12, 1937, and continuing thereafter up to the present time, Richfield has acquired in the Western area service station properties in fee or by lease for a term of years. These service stations, designated as "L-O" stations, have throughout the foregoing period been leased by Richfield to independent operators under Lease form 542, by the terms of which the possession of the service station has been turned over to the independent operator. The lease contains no provision dealing with the purchase or sale of petroleum products or automotive accessories from or through Richfield, and there is no written agreement of

any kind between Richfield and the independent operator of the L-O station covering the purchase and sale of petroleum products and automotive accessories. Richfield has entered into oral contracts and understandings with the independent operators of the L-O stations, under the terms of which the independent operator is required to purchase all of the petroleum products and automotive accessories sold by him at such service station from Richfield.

7. The form of the 542 lease used by Richfield in 1937 (plaintiff's exhibit 1) provides that the service station property was leased to the independent operator for a minimum period of six months with a termination right in either party by written notice thirty days prior to the expiration of any six month period. This provision reads as follows:

> "To Have and To Hold unto Lessee for the period commencing ——, 19—, and continuing until terminated by either party on the — day of —— or the —— day of —— of any calendar year by means of a written [fol. 361] notice of election to terminate served on the other party in the manner herein prescribed in Paragraph '13' hereof at least thirty days prior to the effective date of termination therein specified."

8. Beginning in the year 1941 the form of lease agreement represented by plaintiff's exhibits 1 and 1A was superseded by a new form of lease (plaintiff's exhibit 1B), which provides that the lease could be terminated by either party with or without cause on 24 hours notice. This provision reads as follows:

> "Term To Have and To Hold unto Lessee for the period commencing ———, 19—, and continuing until terminated by either party by means of a written notice of election to terminate served on the other party in the manner prescribed in Paragraph '13' hereof at least twenty-four hours prior to the effective date of termination specified in such notice."

9. Although the form 542 lease underwent several revisions after 1941, the lease form thereafter used by Richfield, as was the fact prior thereto, at all times specified that the lessee should pay a minimum and specified rent

payable in advance on the first day of each month and contained the clauses usually found in leases, some of which are found in the current form of lease adopted by Richfield and used by it from and after January 1949 (plaintiff's exhibit 1G). Such provisions are as follows:

"Description of Property. That in consideration of the payment of the rents and the performance of the covenants and agreements herein set forth to be kept and performed on the part of Lessee, Lessor does hereby lease to Lessee that certain real property situated in the City of ——, County of ——, State of——, together with all appurtenances thereunto belonging and with all improvements, buildings, fixtures, equipment and facilities situated thereon, all as are fully described in Schedule 'A' hereof.

• • • • • • •

[fol. 362] "Rent It is further agreed:

1. Lessee shall pay to Lessor as rent for the premises and property leased hereunder the following sums per month:

January	$——	May	$——	September	$——
February	——	June	——	October	——
March	——	July	——	November	——
April	——	August	——	December	——

All such rentals shall be payable monthly in advance on the first day of the calendar month. Rent for any fractional part of a month shall be duly prorated on the basis of the rent for said month as herein specified. In addition to the aforesaid rental, Lessee shall pay to Lessor as rental for each month of the effective term hereof a sum computed by multiplying the total number of gallons of gasoline in excess of the number of gallons set forth below, received by Lessee on the demised premises during the month for which payment is being made, for resale and distribution therefrom, by the rates following, to-wit:

For the month of January —¢ per gallon of gasoline in excess of —— gallons.

(The above sentence is repeated in the lease in the same style with respect to each of the other months of the year.)

said payments to be made on or before the tenth day of the next succeeding calendar month. In case of fractional monthly periods the number of gallons shown in the last column above will be duly prorated and the gallonage rental will be paid on the gallons of gasoline delivered in excess of such prorated amount.

. . . . . .

"Maintenance 3. Lessee shall, during the term hereof, maintain the demised premises, improvements, buildings, trees, shrubs, lawns, fixtures and equipment in good order and repair and in a clean and safe condi-[fol. 363] tion. In the event of Lessee's failure so to do, Lessor may enter upon the demised premises and make the necessary repairs for the account of Lessee and/or may terminate this lease. Lessee shall make no material change or alteration in the demised premises, improvements, buildings, fixtures and equipment except such as may be necessary to enable Lessee to continue business on said premises, unless the consent in writing of Lessor be first obtained.

"Redelivery 4. Upon the expiration or sooner termination of this agreement, Lessee shall yield up and return to Lessor the demised premises, improvements, buildings, fixtures and equipment in as good condition as when received by Lessee, damage and depreciation due to ordinary wear and use excepted; and shall pay Lessor the cost of restoring the premises, improvements, buildings, fixtures and equipment to the condition in which they were at the time when received by Lessee, damage and depreciation due to ordinary wear and use excepted, together with the value of any equipment lost or damaged beyond repair. Lessor shall not be liable to Lessee for any property left by Lessee in or on the demised premises.

. . . . . .

"Utilities 6. During the occupancy of the demised premises, Lessee shall pay all charges accruing for gas, water, electricity, telephone and other public utilities, and shall not permit any liens to attach to the demised premises. Upon failure of Lessee in this respect, Lessor may, but shall not be obliged to, pay such charges and lien obligations, and add the same to the rental payable hereunder.

"Default 7. Should Lessee at any time fail to faithfully and diligently comply with the terms, conditions and covenants of this lease on his part to be performed, or should Lessee abandon or vacate the demised premises, or should Lessee default in payment of rent at the time due, or should bankruptcy or insolvency [fol. 364] proceedings under the bankruptcy laws of the United States or any state be instituted by or against Lessee, or should any attachment, garnishment, execution or any other legal proceeding be levied or instituted by anyone other than Lessor against the premises or any of the equipment thereon in any action in which Lessee is named as defendant, or should Lessee attempt to sell, assign, pledge or mortgage the said premises or any pert thereof, or allow any lien to attach thereto, or should Lessee enter into a composition for the benefit of creditors, Lessor may, without notice, immediately terminate this lease and re-enter and resume possession of the premises, improvements, buildings, fixtures and equipment.

"Waiver 8. The waiver of any breach hereunder shall not be deemed a continuing waiver or a waiver of any subsequent breach, whether of the same or a different provision of this agreement.

"Assignment 9. This lease shall not be assignable, voluntarily or by operation of law, nor shall Lessee sublet any part of the demised premises without the written consent of Lessor first having been obtained.

"Indemnity 10. Lessee agrees to indemnify and hold Lessor free and harmless from any and all claims for damage to property or injury to or death of person or persons occurring upon the demised premises or arising out of any of the operations of Lessee, his

agents, or employees thereon, or thereabout during the term hereof.

* * * * * * *

"Attorney's Fees 12. In the event Lessor shall employ an attorney or attorneys in connection with the pursuit of any of Lessor's rights, powers or privileges hereunder, Lessee shall pay, in addition to all other sums hereunder, a reasonable attorney's fee.

* * * * * * *

[fol. 365] "Other agreements 14. From the effective date of commencement hereof, this lease terminates and supersedes any lease or other agreement between Lessee and Lessor, or the predecessors of Lessor, under the terms of which Lessee was privileged to occupy the demised premises or any portion thereof or any larger premises of which the premises demised hereby are a part.

"Execution 15. This agreement shall not be binding upon Lessor until executed by a duly authorized officer or agent of Lessor and a fully executed copy hereof delivered to Lessee. It is agreed that the execution hereof has not been induced by any representation, warranty or agreement other than those herein expressed; and the terms hereof shall not be amended or varied except by a subsequent written instrument executed by the parties."

10. The L-O service station operator, upon entering into a lease of a service station with Richfield, takes possession of the service station premises leased to him and thereafter engages in the business of buying petroleum products and automotive accessories and reselling them at retail to the motoring public. The L-O operator generally has an investment in tools, equipment, and merchandise on the service station premises in amounts from $1,000 to $8,000. Upon executing the lease or taking possession of the leased premises, if the L-O operator is preceded by another lessee Richfield instructs the new L-O operator that he is not required to buy non-Richfield approved automotive

accessories or petroleum products then on the service station premises from the former lessee. The L-O operator expends his personal funds in sales solicitation and neighborhood advertising. He offers trade bonuses to his customers in the form of "green stamps" which are paid for by the operator. The L-O operator is solely responsible for his own acts and for those of any of his employees which may cause damage to the person or property of others. The L-O operator purchases and pays Richfield for [fol. 366] the gasoline and other petroleum products and for the sponsored automotive accessories sold to him by Richfield either directly or through the Richfield TBA distributor. These products are not consigned to the L-O operator by Richfield. The L-O operator is responsible for any trade or credit losses, except such as result from the extension of credit to customers carrying valid Richfield credit cards. In all respects the L-O operator is engaged on his own account and for profit in building up a clientele of customers who purchase the products handled by him at the retail service station which he operates.

11. Richfield does not pay the L-O operator any wages, salary, or other compensation. Richfield does not regard the L-O operator as an employee for the purpose of workmen's compensation, social security, unemployment taxes, or any of the withholding taxes, State or Federal, incidental to an employer-employee relationship. Richfield does not withhold any monies from the L-O operator for income tax purposes; and does not perform any of these functions as to any of the employees of the L-O operator.

12. The 24-hour cancellation clause was inserted in the form 542 lease by Richfield with the intent and purpose of effectively enforcing the illegal provisions of the oral contracts and understandings, more fully described in paragraphs 5 and 6 herein, and to enable Richfield to fully control the petroleum products and automotive accessories handled and sold by the L-O service station operator at an L-O service station. The 24-hour cancellation clause was never used by Richfield as a means of terminating the lease for the infraction of any of its express conditions. The tenancy of the L-O independent operator was of unlimited duration as long as the provisions of the oral agreements as

to exclusive dealing in Richfield petroleum products or automotive accessories were complied with. When Richfield representatives discovered petroleum products, automotive accessories, or signs advertising products competitive to those manufactured, sold, or sponsored by Richfield, at the service station of the independent L-O operator, threats to exercise the 24-hour cancellation provision were made, and such cancellation provision was in fact resorted to and exerted in enforcing the oral agreement and under-[fol. 367] standing mentioned in paragraphs 5 and 6 herein. On the termination of an L-O lease, it was Richfield's policy to instruct the new lessee that he was not required to buy from the outgoing lessee any non-Richfield petroleum products or automotive accessories, or other equipment owned by the outgoing lessee and located on the leased premises. The outgoing lessee was unable to dispose of such products to the incoming lessee because of the aforesaid Richfield instructions.

13. Beginning in 1937 and continuing until about 1945 Richfield used three written documents in connection with the 3-C dealer stations. These documents are sometimes referred to by Richfield as covering the 2-B arrangement and are represented by plaintiff's exhibits 3, 3A to 3D, inclusive. The 2-B arrangement consisted of (1) a lease, represented by plaintiff's exhibit 3, of the service station premises from the independent operator to Richfield for a term of years and at a specified rental; (2) a sublease, represented by plaintiff's exhibit 3A, from Richfield to the independent operator of the service station premises, by the terms of which Richfield leased the service station premises back to the independent operator for substantially the same term as the lease to Richfield and usually at substantially the same specified rental; and (3) a sales contract, represented by plaintiff's exhibit 3B, between Richfield and the independent operator pursuant to which the independent operator was obligated to purchase from Richfield a specified minimum amount of petroleum products sold by the operator at the service station covered by the lease and sublease referred to in (1) and (2) herein. Richfield discontinued the 2-B form of arrangement in 1944, at which time it was superseded by the 3-C type of arrangement. At the present time none of the 2-B type of written agreements

are in effect. The practical and intended purpose and effect of the minimum provision of the type of sales contract represented by plaintiff's exhibit 3B was to require the independent operator to purchase all of the petroleum products sold by the operator at the service station covered by the lease and sublease referred to in (1) and (2) herein from Richfield.

14. The forms of written agreements between Richfield and the independent operator of the 3-C service station [fol. 368] in use since 1945 to the present time consist of

(a) a lease of the service station property from the independent operator as lessor to Richfield, represented by plaintiff's exhibit 4;

(b) a sublease of the service station property back to the independent operator lessor, represented by plaintiff's exhibits 4A and 4D; and

(c) an "Operator's Sales Contract" between Richfield and the independent operator lessor, represented by plaintiff's exhibits 4B and 4C.

All three of the above agreements are executed concurrently and for a specified term, which may be as long as twenty years in duration.

15. The service station lease entered into between the independent operator as lessor and Richfield as lessee, referred to in paragraph 14(a) herein and represented by plaintiff's exhibit 4, contained the following provisions:

"2. The improvements, buildings and facilities erected and located on the demised premises are designed for the operation of a gasoline service station thereon, and Lessee shall use the demised premises and property primarily for such purpose; and in no event shall said premises be used for any unlawful or offensive purpose, nor shall Lessee commit any nuisance thereon. In the event the sale of gasoline or other petroleum products upon the demised premises or the operation of a gasoline service station thereon is prevented by law, or the whole or such part of the demised premises as will render the balance thereof unsatisfactory for the operation of a gasoline service station

thereon is taken for public use, this lease shall forthwith terminate.

• • • • • • •

"4. Lessee shall have the right and privilege of erecting, placing, operating and maintaining on said premises all buildings, structures, improvements, driveways, tanks, containers, piping, signs, appliances and equipment of any nature on, under, and above the ground that it may require or desire to use in [fol. 369] operating, transacting and conducting on said premises the business of storing, marketing and distributing petroleum products and automobile accessories by means of a gasoline and oil filling and service station, or by other marketing methods, and by any other business incident to that of a service station; it being understood that Lessee is not hereby restricted from using said premises for any other lawful purpose. Lessee shall have the further right and privilege of painting all or any part of the property leased hereunder so long as said property is not thereby unreasonably damaged; and Lessee may make such changes as it desires to any existing structures and improvements, but any structural alterations or changes made to improvements belonging to Lessor shall become part of the real estate and may not be removed by Lessee at the end of the term of the lease.

• • • • • • •

"8. Lessor agrees not to conduct or permit to be conducted on premises controlled by Lessor, if any, within two hundred (200) yards of the premises demised and leased, any business venture from which petroleum products other than those supplied by Lessee are sold or distributed.

• • • • • • •

"13. In the event of any termination of that certain Operator's Lease, executed concurrently herewith by and between the parties hereto, by the terms of

which Lessee herein as Lessor therein subleases the premises demised hereby to Lessor herein as Lessee therein, Lessee shall be privileged to forthwith terminate this lease by means of a notice in writing to Lessor. Any notice of the aforesaid nature may be served by Lessee at any time after but not before any termination of said Operator's Lease."

16. The service station sublease from Richfield, as lessor, to the independent operator lessor, as lessee, referred to in paragraph 14(b) herein, and represented by plaintiff's exhibit 4A, contains the following provision giving Rich- [fol. 370] field the right to terminate the sublease to the independent operator on five days notice in the event the sales contract between Richfield and the operator (represented by plaintiff's exhibit 4B) is cancelled:

"12. In the event of any termination of that certain Operator's Sales Contract executed concurrently herewith by and between the parties hereto, covering the purchase and sale of Lessee's entire requirements of certain petroleum products for resale from the premises demised hereby, Lessor shall be privileged to terminate this lease by means of a five (5) day notice in writing to Lessee."

17. The form of service station sublease used by Richfield after September 1948, referred to in paragraph 14(b) herein and represented by plaintiff's exhibit 4D, contains the following provision giving Richfield the right to terminate the sublease to the independent operator on seven days notice in the event the sales contract between Richfield and the operator (represented by plaintiff's exhibit 4C) is cancelled:

"12. In the event of any termination of that certain Operator's Sales Contract executed concurrently herewith by and between the parties hereto, covering the purchase and sale of certain petroleum products for resale from the premises demised hereby, Lessor shall be privileged to terminate this lease by means of a seven day notice in writing to Lessee."

18. The operator's sales contract referred to in paragraph 14(c) herein, entered into between Richfield and the independent operators, and represented by plaintiff's exhibit 4B, contained the following provisions requiring the independent operator to purchase his entire requirements with established minimums of petroleum products from Richfield and gave to Richfield the right to paint the service station of the independent operator with its colors and insignia and to charge him therefor in the event the operator's sales contract was cancelled prior to the termination date thereof:

> "1. Seller agrees to sell and deliver to Buyer and Buyer agrees to purchase from Seller, during the [fol. 371] period commencing ——, 19—, and ending ——, 19—, Buyer's entire requirements of the following automotive petroleum products for resale from the service station hereinafter mentioned, provided, however, that in no event shall Buyer purchase and receive during any calendar month of the term hereof less than the minimum quantities specified below:
>
> | | Minimum |
> |---|---|
> | Gasolines | gals. |
> | Lubricating oils | gals. |
> | Greases | lbs. |
>
> • • • • • • •
>
> "8. Seller shall be privileged at any time and from time to time during the term hereof to paint in its colors and insignia the buildings and equipment constituting the service station mentioned in paragraph numbered '4' hereof. In the event of any termination of this agreement prior to the expiration date set forth in paragraph numbered '1' hereof Buyer shall forthwith pay to Seller a sum equal to the total of all monies expended by Seller in performing such painting during the two (2) year period preceding such termination."

19. The entire requirements provisions of paragraph 1 of the operator's sales contract form represented by plain-

tiff's exhibit 4B, referred to in paragraph 18 herein, was revised by Richfield in August 1948. The revised form, represented by plaintiff's exhibit 4C and used by Richfield on 3-C transactions entered into after August 1948, requires the independent operator who is a party to a 3-C arrangement to purchase not less than a minimum nor more than a maximum specified amount of petroleum products from Richfield, and provides as follows:

> "1. Seller agrees to sell and deliver to Buyer and Buyer agrees to purchase from Seller, as ordered by Buyer during the period commencing —— ——, 19—, and ending ———, 19—, the following petroleum [fol. 372] products in calendar monthly quantities not greater than the maximum nor less than the minimum amounts hereinbelow specified. For fractional monthly periods said amounts will be duly prorated.

	Minimum	Maximum
Gasolines	———gals.	———gals.
Lubricating Oils	———gals.	———gals.
Greases	———lbs.	———lbs."

The minimum quantities of gasoline, lubricating oils, and greases which the independent operator is required to purchase under the operator's sales contract (represented by plaintiff's exhibit 4C), are determined by Richfield and are usually fixed by it at 80 per cent of the anticipated requirements of the independent operator. The practical and intended purpose and effect of this minimum-maximum provision is to require the independent 3-C operator to purchase from Richfield all of the petroleum products sold by him at his service station.

20. The provisions of the written agreements referred to in paragraphs 13 to 19, inclusive, herein have been and are supplemented and modified by oral agreements and understandings between Richfield and the independent operators of the 3-C dealer service stations, which oral agreements and understandings provide that the independent operator of a 3-C dealer station shall secure his entire requirements of automotive accessories sold at such service stations, from or through Richfield.

21. Richfield has from March 12, 1937 continuously to the present time entered into written and oral agreements and understandings with the independent operators of the 337 dealer stations. The written agreements consist of sales and painting contracts which are represented by plaintiff's exhibits 5, 5A to 5I, inclusive. The oral agreements relate to the handling of petroleum products and automotive accessories.

22. The first form of written sales contract entered into between Richfield and the independent operator of a 337 dealer station was adopted by Richfield in 1937 and is represented by plaintiff's exhibit 5. This contract con- [fol. 373] tained a provision which required the independent operator to secure a certain and specified minimum amount of petroleum products from Richfield for a minimum period of one year. The contract could, however, be cancelled by Richfield at any time on five days notice to the independent operator. These provisions were as follows:

> "1. Seller agrees to sell and deliver to Buyer and Buyer agrees to purchase from Seller, as ordered by Buyer during the term hereof, the following petroleum products, in quantities not greater than the maximum nor less than the minimum amounts hereinbelow specified for the respective products, the same to be taken in fairly equal monthly quantities.
>
> | | Maximum | Minimum |
> |---|---|---|
> | Gasoline | ———gals. | ———gals. |
> | Lubricating Oils | ———gals. | ———gals. |
> | Greases | ———lbs. | ———lbs." |
>
> • • • • • • •
>
> "5. This agreement shall commence as of the — day of ———, 19—, and shall continued for a period of one year thereafter; provided, however, that Seller may terminate the same at any time by a five (5) days' notice in writing directed to Buyer."

23. No substantial change was made in the written form of sales contract (plaintiff's exhibit 5) until August 1948, after which time Richfield used a form of sales contract

represented by plaintiff's exhibits 5D and 5G. These forms of contracts are in use by Richfield at the present time. These forms (plaintiff's exhibits 5D and 5G) contain provisions which obligate the 337 independent service station operator to purchase a minimum amount of petroleum products from Richfield with a 30-day cancellation right in either party to the contract, as follows:

"1. Seller agrees to sell and deliver to Buyer and Buyer agrees to purchase from Seller, as ordered by [fol. 374] Buyer, during the term hereof, the following petroleum products in calendar monthly quantities not greater than the maximum nor less than the minimum amounts hereinbelow specified for the respective products. For fractional monthly periods said amounts will be duly prorated.

	Minimum	Maximum
Gasolines	———gals.	———gals.
Lubricating Oils	———gals.	———gals.
Greases	———lbs.	———lbs."

"The above quantities represent those to be purchased and sold under normal business conditions and in the event, because of climatic or other conditions, Buyer's sales are abnormally less during certain months of the year, the aforesaid quantities will be proportionately reduced for said months based upon previous business experience of Buyer's station or of business generally in the vicinity in the event Buyer's station has had no previous business experience.

"The obligation of Seller to deliver the minimum quantities above specified shall at all times be subject to Seller's right to be exercised within its sole and exclusive discretion with or without notice to discontinue, restrict and/or curtail the delivery of and/or to change the specifications of any product in the event of shortage of products, crude, base materials, additives, transportation, or labor and/or for any reason similar or dissimilar to the foregoing. Failure of Seller to fill any order or orders by reason of the aforesaid causes shall reduce the purchase obligations of Buyer to that extent. In the event that Seller is unable to make de-

livery to all of its customers by reason of any of the causes set forth in this paragraph and yet is able to make some deliveries, its failure to make deliveries in whole or in part to Buyer even while making de-
[fol. 375] liveries of the same or similar commodities to other buyers or consignees or to its own bulk storage and distributing plants, agents and distributors for sale and delivery to the general public, shall not constitute a default by Seller.

"2. This agreement shall commence as of the —— day of ———, 19—, and shall extend to and including the —— day of ———, 19—; subject, however, to termination by either party at any time during the term hereof by means of a thirty (30) day notice in writing to the other party."

24. The minimum-maximum provisions contained in paragraph 1 of plaintiff's exhibits 5D and 5G referred to in paragraph 23 herein are substantially the same and are comparable to the minimum-maximum provisions of the 2-B sales contract (plaintiff's exhibit 3B referred to in paragraph 13 herein) and the operator's sales contract (plaintiff's exhibit 4C referred to in paragraphs 19 and 20 herein), and the minimum requirement provisions contained in plaintiff's exhibits 5D and 5G were fixed and determined by Richfield, and the practical and intended purpose and effect of said provisions has been to require the 337 independent service station operator to secure his entire requirements of petroleum products from Richfield.

25. The written form of Richfield sales contract was usually accompanied by a painting agreement of the form represented by plaintiff's exhibits 5A, 5C, 5E, and 5F, depending on the date of execution of the painting contract. The aforesaid painting agreement contained various provisions which tied said agreement into the sales contract referred to in paragraphs 21 to 23, inclusive, herein, which provisions required the independent operator of a 337 service station to pay Richfield for the painting of his service station (plaintiff's exhibits 5, 5B, 5D, and 5G) in the event the sales contract was cancelled for any reason, and which provisions also gave Richfield the right to control the plac-

ing or removal of advertising signs, trade marks, and other insignia on the premises of the 337 service station operator. Such provisions are exemplified in plaintiff's exhibit 5A, as follows:

> [fol. 376] "That Whereas, Richfield as Seller, and Dealer as Buyer, have entered into a Sales Contract dated the — day of ——, 19—, for the term of one year commencing on the —— day of ———, 193—, under the terms of which Dealer as Buyer thereunder agreed to purchase and receive certain stated quantities of Richfield gasolines, lubricating oils and greases for resale at Dealer's service station located at ——; and
>
> "Whereas, Dealer desires to have the service station buildings at said location painted in Richfield colors and insignia and Richfield is willing, on certain conditions hereinafter set forth, to furnish the necessary work, labor and material and to paint the aforesaid service station buildings;
>
> "Now, Therefore, in consideration of the premises and of the covenants of the parties hereto, it is agreed:
>
> 1. That Richfield shall paint the aforesaid service station buildings at said location and furnish the necessary work, labor and materials therefor at a maximum cost of $——.
>
> 2. That Dealer shall pay to Richfield at the time of and upon any termination by Richfield of the above mentioned Sales Contract by reason of the breach by Dealer as Buyer thereunder of any of the terms, covenants or conditions therein contained, the sum of $—— for said work, labor and materials, together with a reasonable sum as attorneys fees in the event suit is instituted by Richfield to collect said sum, or any part thereof."

in plaintiff's exhibit 5C, as follows:

> "1. That Dealer shall remove from the surface of the service station which is to be painted all signs and insignia, and upon completion of the painting of said [fol. 377] service station by Richfield shall not place

upon or over the painted surfaces any advertising sign, trade mark, insignia or any other matter without first procuring the consent and approval of Richfield."

and in plaintiff's exhibit 5E (adopted in August 1948), as follows:

"1. That Dealer shall remove from the surface of the service station which is to be painted all signs, insignia, and obstructions, so that the obligations of Richfield hereunder may be performed with a minimum of hinderance."

26. The written sales and painting agreements referred to in paragraphs 21 to 25, inclusive, were and have been since 1937 supplemented by oral agreements and understandings which provide that the independent operator of the 337 service station shall purchase all of the petroleum products and automotive accessories sold by him at his service station from or through Richfield. The purpose and intended effect of the painting agreement is to secure an exclusive Richfield outlet, and no painting agreement is entered into by Richfield except upon the oral understanding that the independent operator of the 337 dealer service station will purchase his entire requirements of petroleum products and automotive accessories from or through Richfield. The obligation of the independent operator to pay for the cost of painting in the event the sales contract is terminated by him prior to the expiration of the term thereof was intended to and has had the effect of compelling the independent operator to purchase all of his requirements of petroleum products and automotive accessories from or through Richfield. The painting agreements and the oral agreements and understandings supplementing the same have had the intended effect of shutting out all competition for the petroleum products and automotive accessory business of the 337 independent service station operator.

27. The relationship established by the written and oral contracts and agreements described and referred to in paragraphs 5 to 26, inclusive, is not that of employer and employee, or principal and agent, but that of independent

contractor, and each independent operator is an independent business man.

28. Beginning in or about June 1938, with the purpose and [fol. 378] intent of further effectuating and enforcing the exclusive dealing provisions of the written and oral contracts between Richfield and the independent operators of the L-O, 3-C dealer, and 337 dealer service stations, Richfield adopted the policy of refusing to sell gasoline to the independent operator of any service station handling or selling gasoline competitive to Richfield gasoline. Pursuant to this policy Richfield withdrew from all split pump accounts and refused to sell gasoline to any independent operator of the L-O, 3-C dealer, and 337 dealer stations except on the oral condition, understanding, and agreement that the independent operator purchase all of his requirements of gasoline from Richfield. Richfield has not, in fact, since said time sold or supplied gasoline to any independent operator who has not in fact purchased all of his gasoline requirements from Richfield regardless of the provisions of any written sales contract with said independent operator. When the independent operator wished to operate his station as a split pump station, Richfield terminated all supply arrangements with such operators. Said policy has had the effect, as intended by Richfield, of preventing the independent operator of an L-O, 3-C dealer, or 337 dealer station from handling or selling gasoline competitive to Richfield at said stations and of preventing the operator of the 3-C or 337 dealer stations from purchasing any quantities of gasoline above the specified minimums designated in the written forms of sales contracts (plaintiff's exhibits 3B, 4C, 5, 5B, 5D, and 5G) from any manufacturer or supplier of gasoline other than Richfield.

29. Richfield inspects, polices, and supervises the activities and sales of the independent operators at the 2,965 service stations to make certain that no petroleum products or automotive accessories except those designated by defendant were or are sold, featured, or handled by the independent operator at the service station operated by him.

30. The number of service stations subject to the written and oral agreements referred to in paragraphs 5 to 26, inclusive, was 2,171 as of December 31, 1938 and 2,965 as of December 31, 1950.

31. The number of service stations of each of the three types located in each of the six Western States on the above dates is as follows:

[fol. 379]

December 31, 1938 Type of Station	Arizona	California	Idaho	Nevada	Oregon	Washington	Total
L–O	83	769	1	12	78	160	1,103
3–C Dealer (form 2–B in 1938)	0	269	1	3	80	159	512
337 Dealer	96	218	0	6	119	117	556
	179	1,256	2	21	277	436	2,171
December 31, 1950 Type of Station							
L–O	70	870	16	21	148	218	1,343
3–C Dealer	17	116	.....	3	45	80	261
337 Dealer	74	695	40	22	221	309	1,361
	161	1,681	56	46	414	607	2,965

32. As of December 31, 1950 there were 4,581 written agreements of the types described in paragraphs 5 to 26, inclusive, in full force and effect in the six States of the Western area, as follows:

Type of Agreement	Arizona	California	Idaho	Nevada	Oregon	Washington	Total
Lease (form 542) (pl. exh. 1G)	70	870	16	21	148	218	1,343
3–C Service Station Lease (form 362) (pl. exh. 4)	17	116	.....	3	45	80	261
3–C Operator's Lease (form 668) (pl. exhs. 4A and 4D)	17	116	.....	3	45	80	261
3–C Sales Contract (form 783) (pl. exhs. 4B and 4C)	17	116	.....	3	45	80	261
Sales Contract (form 337) (pl. exhs. 5B and 5D)	74	695	40	22	221	309	1,361
Painting Agreement (form 59) (Pl. exhs. 5C, 5E, 5F)							1,094
GRAND TOTAL							4,581

33. The aforesaid 4,581 written leases, sales contracts, and painting agreements were supplemented by the oral agreements and understandings referred to in paragraph 5 herein, which were superimposed by Richfield on the

[fol. 380] written agreements in effect with respect to the operators of the 2,965 service stations, which confine the operations of the stations to which they apply to dealing exclusively with Richfield petroleum products and automotive accessories handled or sponsored by Richfield. The total number of agreements and understandings, written and oral, as of December 31, 1950 was approximately 7,546.

34. The total approximate dollar volume of business done between Richfield and the independent service station operators under the 7,546 written and oral agreements at the 2,965 service station outlets referred to in paragraphs 30 and 31 herein, for the year 1950 was $43,174,243.00.

35. The total quantity and approximate dollar volume of sales of petroleum products by Richfield to each of the three types of stations referred to in paragraph 31 herein, for the years 1938 and 1950 was as follows:

1938—Quantity Volume	Gasoline	Lubricating Oils & Greases (Not broken down as to types of outlets)
L-O Stations	75,772,000 Gals.	
3-C (2-B) Dealer Stations	38,641,000 Gals.	
337 Dealer Stations	12,166,000 Gals.	
Total (all stations)	126,579,000 Gals.	2,647,424 Gals.

1938—Approximate Dollar Value	Gasoline	Lubricating Oils & Greases (Not broken down as to types of outlets)
L-O Stations	$ 8,158,352.00	
3-C (2-B) Dealer Stations	4,160,466.00	
337 Dealer Stations	1,371,643.00	
Total (all stations)	$13,690,461.00	$1,098,971.68

1950 Quantity Volume		
L-O Stations	160,759,000 Gals.	
3-C Dealer Stations	20,385,000 Gals.	
337 Dealer Stations	67,476,000 Gals.	
Total (all stations)	248,620,000 Gals.	3,491,369 Gals.

[fol. 381]

1950 Dollar Value	Gasoline	Lubricating Oils & Greases (Not broken down as to types of outlets)
L-O Stations	$23,790,968.00	
3-C Dealer Stations	3,069,987.00	
Dealer Stations	10,164,158.00	
Total (all stations)	$37,025,113.00	$2,546,127.59

36. In 1938, Richfield sold and distributed tires and tubes in the amount of $183,310.00 to the 2,171 retail service stations referred to in paragraph 31 herein. In addition, automotive accessories in the amount of $295,672.16 were shipped by manufacturers and suppliers for distribution to the aforesaid retail service stations upon which sales Richfield received commissions in the amount of $23,864.68.

37. Beginning in 1944, Richfield inaugurated a new TBA program for distributing its automotive accessories to the L-O, 3-C, and 337 dealer service stations. Since 1944, Richfield has sold and distributed automotive accessories which it purchases from various manufacturers and suppliers directly to the L-O, 3-C, or 337 dealer service stations or through TBA distributors designated by it. In addition, the manufacturers and suppliers of automotive accessories ship various automotive accessories to TBA distributors for distribution to such service station dealers, upon which sales Richfield receives commissions from the manufacturer and supplier. The total dollar volume of automotive accessories sold or distributed by Richfield for the year 1950 to the 2,965 L-O, 3-C, and 337 dealer service stations referred to in paragraph 31 herein was $3,603,003.85, broken down into products sold as follows:

1950	Tires & Tubes	Batteries	Other Accessories
Direct sales by Richfield to Dealers	$ 167,946.41	$ 17,323.36	$.....
Sales to dealers by TBA distributor of automotive accessories purchased from manufacturers and suppliers by Richfield	1,872,595.02	388,345.12	733,746.34
Sales to dealers by TBA distributor of automotive accessories shipped by manufacturers upon which Richfield received a commission	.....	.....	423,047.60
	$2,040,541.43	$405,668.48	$1,156,793.94

[fol. 382] Total amount of tires and tubes, batteries, and other accessories $3,603,003.85.

38. The main offices of Richfield are located at Los Angeles, California. Richfield has three divisional offices which are located at Seattle, Washington; San Francisco, California; and Los Angeles, California. The written

agreements mentioned in paragraphs 5 and 32 and which are in effect in the six States of the Western area were executed and approved either at the main Richfield office in Los Angeles, California or at one of its three divisional offices. The written agreements with the L-O, 3-C, and 337 dealer service station operators in the States of Oregon, Washington, and Idaho are executed and approved at Seattle, Washington. The written agreements with the L-O, 3-C, and 337 dealer service station operators for the Northern part of California and the Northern part of Nevada are executed and approved at San Francisco. The written agreements with the L-O, 3-C, and 337 dealer service station operators for the Southern part of California, Southern Nevada, and the State of Arizona are executed and approved at Los Angeles. Some of the written contracts referred to in paragraphs 5 and 30 herein must be approved at Richfield's main office in Los Angeles.

39. The written and oral agreements referred to in paragraphs 32 and 33 herein contemplate the movement and distribution of goods originating in interstate commerce. There is a constant flow in interstate commerce of the products produced, distributed, and sold by Richfield. The transactions under the agreements are in the course of interstate commerce, directly affect the independent dealer, prevent him from dealing with competitive suppliers, and directly affect the shipment of competitive goods originating in interstate sources.

40. Richfield distributes and sells, or arranges for the distribution and sale, of "petroleum products" and "automotive accessories" to retail service station outlets in the six States of the Western area. Richfield has oil reserves and producing wells in certain oil fields in California. Crude oil is transported by Richfield from producing wells in California to its refineries located at Watson and Vinvale, California. At the Watson refinery crude oil is refined into gasoline and other petroleum products. [fol. 383] Richfield owns and operates two natural gasoline plants in California. Gasoline and other petroleum products refined at the gasoline plants in California are shipped by Richfield to its Watson refinery. The petroleum products refined at its refinery at Watson, California are

in some instances shipped by Richfield from its Watson refinery to bulk plants located in the States of California, Oregon, Washington, Arizona, Nevada, and Idaho. In excess of 65 per cent of the gasoline and petroleum products refined at its Watson refinery and shipped to States other than California are shipped by Richfield from said refinery to marine terminals and from such marine terminals to bulk plants. Shipments are made by Richfield to its marine terminals and bulk plants for the purpose of distributing and selling petroleum products to retail service stations in the six States of the Western area.

41. Richfield owns 107 bulk plants in California, of which 23 are operated by Richfield and 84 by commission agents from which petroleum products are distributed by Richfield and commission agents to 1,577 service stations in California. It owns 35 bulk plants in Oregon, of which 2 are operated by Richfield and 33 by commission agents, from which bulk plants petroleum products are distributed by Richfield and commission agents to 388 service stations in Oregon. Richfield owns 36 bulk plants in Washington, of which 4 are operated by it and 32 by commission agents, and from which bulk plants petroleum products are distributed by Richfield and commission agents to 646 service stations in Washington. Richfield owns 7 bulk plants in Nevada, all of which are operated by commission agents and from which petroleum products are distributed by commission agents to 39 service stations in Nevada. Richfield owns 5 bulk plants in Idaho, all of which are operated by commission agents, from which petroleum products are distributed by Richfield and commission agents to 56 service stations in Idaho. Richfield owns 22 bulk plants in Arizona, of which 2 are operated by Richfield and 20 by commission agents, from which petroleum products are distributed by Richfield and commission agents to 190 service stations in Arizona. In a few instances petroleum products have been delivered from bulk plants in one State to service stations located in other States.

[fol. 384] 42. The title in and control of all petroleum products distributed by Richfield are retained by it until delivery is made to the independent operator of the L-O, 3-C, and 337 service station at his respective station. Ship-

ments from the Watson refinery directly to bulk plants or to marine terminals for shipment to bulk plants are made according to anticipated needs or as ordered. There is a constant flow of petroleum products from the refinery at Watson, California to the bulk plants located in each of the six States of the Western area.

43. The automotive accessories which are distributed and sold by Richfield to independent service station operators are manufactured by companies other than Richfield and are shipped by such manufacturers to a designated Richfield TBA distributor or, in some instances, directly to service station operators, from factories located both within and outside the States of the Western area. Richfield has entered into arrangements with approximately 225 TBA distributors to receive and handle the orders of independent service station operators for automotive accessories within marketing areas designated for each TBA distributor by Richfield. Approximately 175 of such TBA distributors also act as commission bulk plant agents of Richfield for the distribution of petroleum products under a commission agency agreement. In 1940 and for a short time thereafter the form of commission agency agreement specified that the commission agent should "purchase or accept on consignment from persons, firms or corporations designated by Richfield, Agent's entire requirements of such automotive accessories and petroleum products as Richfield does not sell or distribute. The arrangement between Richfield and the TBA distributor has, since that time, been an oral one whereby the TBA distributor agrees to handle and sell automotive accessories within an area designated by Richfield to the independent operators who have entered into the written and oral agreements mentioned in paragraphs 32 and 33 herein. Under the terms of such oral agreements the TBA distributor is required to report to Richfield on all sales of automotive accessories made to independent operators and to further report instances in which said operators are selling or acquiring automotive accessories from or through sources other than Richfield.

[fol. 385] 44. Orders for automotive accessories are in some instances placed with the manufacturers thereof by Richfield with instructions to make shipment from the place

of manufacture to a designated TBA distributor and, in other instances, orders are placed directly by the TBA distributors with the manufacturer for Richfield's account and shipment is made to such distributors who are located in the six States of the Western area. Such shipments are generally made in interstate commerce by the manufacturer to the TBA distributor and by him sold and delivered to the L-O, 3-C, and 337 service station operators. The manufacturer of the automotive accessory bills Richfield for all orders filled by it with the exception of certain miscellaneous automotive accessories upon which Richfield receives commissions from the manufacturers thereof for all orders filled by it whether received from either Richfield or the TBA distributor. Richfield, in turn, bills the TBA distributor for all automotive accessories delivered to the TBA distributor by the manufacturer thereof. The TBA distributor bills the independent service station operator for all products ordered by him from or through the TBA distributor.

45. Numerous manufacturers and producers of petroleum products and automotive accessories located both inside and outside the Western area, other than those producers and manufacturers whose products are sponsored and marketed by Richfield, are prepared to and have attempted to sell their respective brands of petroleum products, tires, tubes, batteries, and other accessories to independent operators within the Western area who have entered into the written and oral agreements mentioned in paragraphs 32 and 33 herein. Many such manufacturers and producers have factories or refineries located in States outside the Western area and are engaged in the business of marketing their petroleum products or automotive accessories within the Western area. Other manufacturers and producers located within the Western area make, sell, and distribute petroleum products or automotive accessories in interstate commerce throughout the six States of the Western area. In many instances direct sales representatives of manufacturers and producers have unsuccessfully attempted to sell the independent operators who were and still are [fol. 386] parties to the written or oral agreements hereinbefore referred to.

46. The manufacturers, producers, distributors, and sellers of products competitive to those sold or distributed by Richfield to the independent operators have been unable to sell their petroleum products and automotive accessories and have been unable to increase their sales or compete for a part of the market represented by the three types of retail service station outlets, the independent operators of which are subject to the written and oral contracts and understandings mentioned in paragraphs 32 and 33 herein. Such agreements and understandings, written and oral, have denied to manufacturers and suppliers of such competitive products access to the 2,965 service stations operated by the independent operators.

47. The intent, purpose, and effect of the exclusive supply provisions of the written and oral agreements and understandings mentioned in paragraphs 32 and 33 herein, have been to prevent the independent operator subject to said agreements and understandings from handling any petroleum products, tires, tubes, batteries, and automotive accessories other than those manufactured, sold, supplied, or sponsored by Richfield. When the independent operator handled products competitive to those manufactured, distributed, or sponsored by Richfield he did not do so openly nor did he display signs advertising such competitive products. Independent operators have been denied access to competitive products by the provisions of the foregoing agreements and understandings and have been prevented from purchasing petroleum products or automotive accessories in an open and competitive market of the quality which they desire and at prices determined by free and open competition despite the availability of competitive products demanded by customers or offered for sale to the independent operator at prices lower than the prices prevailing for equivalent items of sponsored automotive accessories. The written and oral agreements and understandings are intended to and in practice do confine the independent operators to the particular products and automotive accessories handled or sponsored by Richfield.

48. The direct flow of interstate commerce in petroleum products and automotive accessories has been affected by the written and oral agreements mentioned in paragraphs

[fol. 387] 32 and 33 herein, (1) by channeling the products manufactured or sponsored by Richfield, regardless of their interstate or intrastate source, through an exclusive group of outlets; (2) by denying the independent service station operators the right to buy products competitive thereto; and (3) by denying manufacturers of competitive products the right to sell the independent operators at the 2,965 service stations.

Conclusions of Law

1. Richfield is engaged in the manufacture, sale, and/or distribution of petroleum products and automotive accessories in interstate commerce and in the course of such commerce has entered into contracts, agreements, and understandings, both written and oral, which provide for the sale and distribution of such petroleum products and automotive accessories to independent operators in interstate commerce.

2. The written and oral contracts, agreements, and understandings described and referred to in paragraphs 5, 6 to 9, inclusive, 13 to 28, inclusive; 30, 32 and 33; 39, 43, 45 to 48, inclusive, directly affect and unreasonably restrain the course of interstate commerce in petroleum products and automotive accessories in violation of Section 1 of the Sherman Act (26 Stat. 209; 15 U. S. C. 1).

3. The written and oral contracts, agreements, and understandings described and referred to in paragraphs 5, 6 to 9, inclusive; 13 to 28, inclusive; 30, 32 and 33; 39, 43, 45 to 48, inclusive, substantially lessen competition and tend to create a monopoly in the sale and distribution of petroleum products and automotive accessories in violation of Section 3 of the Clayton Act (38 Stat. 736; 15 U. S. C. 14).

4. The relationship established by the written and oral contracts, agreements, and understandings described and referred to in paragraphs 5, 6 to 9, inclusive; 13 to 28, inclusive; 30, 32 and 33; 39, 43, 45 to 48, inclusive, is not that of employer and employee or principal and agent, but is that of an independent contractor.

5. The relationship established by the written lease en- [fol. 388] tered into between Richfield and the independent L-O operator lessee (of which plaintiff's exhibits 1B to

1G are representative forms) is that of landlord and tenant, and the 24-hour termination clause contained in said L-O lease forms is invalid, against public policy, and cannot, either under State or Federal law, be enforced as a means of terminating the lease for even legal grounds by any notice by either side less than at least the minimum rental period for which rent is reserved—one month.

6. The written and oral contracts, agreements, and understandings described and referred to in paragraphs 5, 6 to 9, inclusive; 13 to 28, inclusive; 30, 32 and 33; 39, 43, 45 to 48, inclusive, have had the necessary and intended effect of foreclosing competition in the sale of petroleum products and automotive accessories from a substantial market for such products in the six States of the Western area.

7. The written and oral contracts, agreements, and understandings described and referred to in paragraphs 5, 6 to 9, inclusive; 13 to 28, inclusive; 30, 32 and 33; 39, 43, 45 to 48, inclusive, unreasonably restrain and substantially lessen competition in an appreciable segment of interstate commerce in the six Western States of the Western area in the sale and distribution of petroleum products and automotive accessories.

8. The written and oral contracts and agreements described and referred to in paragraphs 5, 6 to 9, inclusive; 13 to 28, inclusive; 30, 32 and 33; 39, 43, 45 to 48, inclusive, have had the necessary and intended effect of denying the independent operators access to products competitive to those manufactured, handled, and sponsored by Richfield and of locking out such operators from the sources of such products originating in interstate commerce. Such written and oral contracts, agreements, and understandings also confine the independent operators to the handling of and dealing in petroleum products and automotive accessories manufactured, handled, or sponsored by Richfield.

9. The written and oral contracts and agreements described and referred to in paragraphs 5, 6 to 9, inclusive; 13 to 28, inclusive; 30, 32 and 33; 39, 43, 45 to 48, inclusive, have had the necessary and intended effect of denying manufacturers and suppliers of petroleum and automotive [fol. 389] accessories competitive to those manufactured or sponsored by Richfield access to a substantial number of

potential outlets for the sale of their products in the six States of the Western area.

10. The number of outlets and the volume of business in petroleum products and automotive accessories foreclosed to competition by the written and oral contracts and agreements described and referred to in paragraphs 5, 6 to 9, inclusive; 13 to 28, inclusive; 30, 32 and 33; 39, 43, 45 to 48, inclusive, and in effect in the six States of the Western area is substantial whether considered comparatively or not.

11. The provisions of the written and oral contracts and agreements described and referred to in paragraphs 5, 6 to 9, inclusive; 13 to 28, inclusive; 30, 32 and 33; 39, 43, 45 to 48, inclusive, are illegal in their effect and the plaintiff is entitled to an injunction and other equitable relief as prayed for.

Dated this 2nd day of August, 1951.

Leon R. Yankwich, United States District Judge.

[fol. 390] [File endorsement omitted]

UNITED STATES DISTRICT COURT

Civil Action No. 6896-Y

UNITED STATES OF AMERICA, Plaintiff

v.

RICHFIELD OIL CORPORATION, Defendant

FINAL JUDGMENT—Filed August 2, 1951, Docketed August 3, 1951

The Court having rendered its opinion herein on July 2, 1951; having duly considered the proposals of the parties as to its judgment, and having filed its findings of fact and conclusions of law, wherein the defendant herein was found to have violated Section 1 of the Act of Congress of July 2, 1890, as amended, commonly known as the Sherman Act, and Section 3 of the Clayton Act,

It is hereby ordered, adjudged, and decreed as follows:

I

As used herein, "Richfield" refers to the defendant Richfield Oil Corporation.

As used herein, the term "retail outlet" refers to any service station at which "petroleum products" and/or "automotive accessories" manufactured or "sponsored by" Richfield are sold or distributed by an "independent dealer."

As used herein, the term "independent dealer" refers to the operator of any "retail outlet" who operates such retail outlet as an independent business enterprise and not as an [fol. 391] employee or agent of Richfield.

As used herein, the term "petroleum products" refers to products obtained or manufactured from natural gases or crude oil by any process and sold or used as a fuel or lubricant for automotive vehicles, together with miscellaneous oils and compounds derived from such natural gases or crude oils and designated for various specific uses and includes such petroleum products as are manufactured or "sponsored by" Richfield and sold by Richfield to an independent dealer and by him resold to the user or consumer at a retail outlet.

As used herein, the term "automotive accessories" refers to replacement parts and articles other than "petroleum products" used on or in the servicing or repairing of automotive vehicles and includes tires, tubes, batteries, spark plugs, oil filters, oil filter cartridges, fan belts, battery cables, auto lamp bulbs, fuses, windshield wipers and blades, tire repair and vulcanizing kits, antifreeze preparations, tire chains, waxes and polishes and other like items, and includes such "automotive accessories" as are manufactured or "sponsored by" Richfield and sold or otherwise distributed by it to an independent dealer and by him resold to the user or consumer at a retail outlet.

The term "sponsored by," as used herein, refers to petroleum products and/or "automotive accessories" which are not manufactured or produced by Richfield.

II

Richfield has entered into contracts consisting of written and oral agreements and understandings which unreasonably restrain interstate trade and commerce in petroleum products and automotive accessories in violation of Section 1 of the Act of Congress of July 2, 1890, as amended, 26 Stat. 209; 15 U.S.C. § 1, commonly known as the Sherman Act.

III

Richfield has entered into contracts consisting of written and oral agreements and understandings, the effect of which [fol. 392] has been to substantially lessen competition and tend to create a monopoly in the sale and distribution of petroleum products and automotive accessories, in violation of Section 3 of the Act of Congress of October 15, 1914, as amended, 38 Stat. 731; 15 U.S.C. § 14, commonly known as the Clayton Act.

IV

All of the provisions of any written or oral agreement or understanding between Richfield and any independent dealer, including any written or oral agreement or understanding between Richfield and any independent dealer operating a retail outlet under an "L-O," "3-C," or "337" type of arrangement, and all provisions of like or similar import or effect, either expressed or implied, in any other written or oral agreement or understanding between Richfield and any independent dealer which contains the condition, agreement, or understanding that said independent dealer shall purchase or acquire for sale all of his requirements of petroleum products and/or automotive accessories which are used or sold, or bought to be used or sold, by said independent dealer at a retail outlet from or through defendant or any of its representatives, are hereby adjudged unlawful and declared illegal and void.

V

Richfield, its successors or assigns, its officers, directors, agents, representatives, and all persons and corporations acting or claiming to act on its behalf, are hereby perpetually enjoined from entering into or enforcing the provi-

sions of any contract, agreement, or understanding, written or oral, expressed or implied, with any independent dealer (including any independent dealer operating a retail outlet under an L-O, 3-C, or 337 type of arrangement with defendant) or from inducing or compelling or attempting to induce or compel, by any means whatsoever, any independent dealer (including any independent dealer operating a retail [fol. 393] outlet under an L-O, 3-C, or 337 type of arrangement with defendant) to enter into any contract, agreement, or understanding, written or oral, expressed or implied, or of any kind whatsoever, which has the purpose or effect or which provides:

(a) that the independent dealer shall secure all of his requirements of any petroleum product from or through Richfield or shall not handle the petroleum product of any other company;

(b) that the independent dealer shall secure all of his requirements of any one or more automotive accessories or types of automotive accessories from or through Richfield, or will not handle automotive accessories competitive with those distributed or sponsored by defendant or which prevent him from handling or acquiring for sale any automotive accessory or type of accessory from or through sources other than defendant;

(c) that the sale of any petroleum product or automotive accessory by Richfield to any independent dealer shall be conditioned on the handling by the independent dealer of petroleum products or automotive accessories manufactured or sponsored by the defendant.

VI

Richfield, its successors or assigns, its officers, directors, agents, representatives, and all persons and corporations acting or claiming to act on its behalf, are hereby perpetually enjoined from exercising the 24-hour termination clause contained in any lease which it now has with or which is in effect between itself and any independent dealer operating a retail outlet under an L-O type of arrangement with defendant, and is perpetually enjoined from cancelling any lease which it now has with or which may be in effect between itself and any independent dealer operating a retail

service station under the L-O type of arrangement on less than 30-days' written notice to any such dealer. Such 30-day cancellation privilege may be exercised by defendant only [fol. 394] for a breach of any of the written covenants contained in any written lease entered into between Richfield and an independent dealer operating a retail outlet under the L-O type of arrangement and by written notice sent by registered mail to such dealer advising him of such alleged breach and notice of cancellation therefor. A copy of any such written notice of cancellation shall be sent by registered mail to the Attorney General of the United States or to his duly authorized representative designated by the Attorney General in writing to Richfield at the time said written notice of cancellation is sent to such dealer by defendant.

VII

Within sixty days after this judgment shall become operative and go into effect, Richfield shall send written notice by registered mail to each independent dealer with whom it then has existing written or oral contractual relations of the provisions of this decree in such form as is first approved by the attorneys for the plaintiff or by the Court in the event the attorneys for the plaintiff and Richfield are unable to agree on the form of such written notice.

VIII

The enforcement of this judgment is stayed until the expiration of six (6) months from the date of the entry of this judgment and, in the event an appeal is taken from this judgment, or any part thereof, the enforcement of this judgment is stayed until the expiration of six (6) months from the date such appeal is finally determined.

[fol. 395]

IX

For the purpose of securing compliance with this judgment the defendant, upon the written request of the Attorney General or the Assistant Attorney General, shall submit such reports with respect to matters contained in this judgment as may from time to time be necessary for the enforcement of the judgment, and any duly authorized representative or representatives of the Department of Justice

shall, upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and on notice reasonable as to time and subject matter to Richfield, made to its principal office at Los Angeles, California, and subject to any legally recognized privilege, be permitted (1) access in the presence of defendant's counsel or other representative during the office hours of said defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of said defendant relating to any matters contained in this judgment; (2) subject to the reasonable convenience of said defendant and without restraint or interference from it, to interview officers or employees of such defendant, who may have counsel present, regarding such matters, provided, however, that no information obtained by the means provided in this paragraph shall be divulged by the Department of Justice to any person other than a duly authorized representative of such Department except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this judgment or as otherwise required by law.

X

Jurisdiction of this cause is retained for the purpose of enabling any of the parties to this judgment to app'y to the Court at any time for such further orders and directions as may be necessary or appropriate for the construction or [fol. 396] carrying out of this judgment, for the amendment, modifications, or termination of any of the provisions thereof, for the enforcement of compliance herewith and for the punishment of violations thereof.

XI

Judgment is entered against the defendant for all costs to be taxed in this proceeding. Costs taxed at $11,631.24.

Dated: August 2, 1951.

Leon R. Yankwich, United States District Judge.

Approved as to form

William J. DeMartini, Krystal & Paradise, Robert E. Paradise, By —— ——, Attorneys for Defendant.

William C. Dixon, Special Assistant to the Attorney General; Lawrence W. Somerville, Special Attorney; Theron M. Hall, Special Attorney; Theodore M. Alexander, Special Attorney; T. Keister Greer, Special Attorney, By Lawrence W. Somerville, Attorneys for Plaintiff.

[fol. 397] IN UNITED STATES DISTRICT COURT

[File endorsement omitted]

[Title omitted]

NOTICE OF MOTION FOR AMENDMENT TO FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL JUDGMENT—filed August 10, 1951

To Plaintiff and its Attorneys:

Please take notice that on August 17, 1951, at the hour of 10 a. m., or as soon thereafter as defendant's counsel may be heard, defendant will move the above entitled court in the Court Room of the Honorable Leon R. Yankwich, Judge of said court, in the United States Post Office and Court House Building in Los Angeles, California, to grant the motion which is attached hereto.

Said motion will be made upon and reference will be made to the records, papers, pleadings and files herein, including the reporter's transcript of proceedings at the trial, the [fol. 398] exhibits received in evidence, the testimony offered and rejected, the Opinion and Order of the Court filed on July 23, 1951, and the Findings of Fact, Conclusions of Law and Final Judgment made, entered and filed herein on August 2, 1951.

Said motion will be made under and pursuant to the provisions of Rule 52 of the Federal Rules of Civil Procedure, as amended.

Dated: August 10, 1951.

William J. DeMartini, Robert E. Paradise; By Robert E. Paradise, Attorneys for Defendant.

Order Shortening Time

It appearing that the Honorable Leon R. Yankwich, the Judge who tried the above entitled cause, is presently absent from the City of Los Angeles, and will be in the City of Los Angeles for the purpose of hearings only on the 17th of August, 1951;

Now, therefore, it is hereby ordered that the time for service of the attached Notice of Motion and Motion be, and the same is hereby, shortened to permit service thereof upon attorneys for the plaintiff on or before August 10th, 1951; and

It is hereby further ordered that the said motion shall be heard before the Honorable Leon R. Yankwich on August 17, 1951.

James M. Carter, Judge of the District Court.

[fol. 399] In United States District Court

[Title omitted]

Motion for Amendment to Findings of Fact, Conclusions of Law and Final Judgment Made, Entered and Filed Herein on August 2, 1951

Comes now defendant, Richfield Oil Corporation (hereinafter referred to as "Richfield"), and moves the Court, pursuant to Rule 52 of the Federal Rules of Civil Procedure, as amended, to amend its Findings of Fact, Conclusions of Law and Final Judgment herein, made, entered and filed on August 2, 1951, in the following respects and for the following grounds and reasons:

I

Findings of Fact

A. Richfield moves to amend the following particular findings of fact:

[fol. 400] 1. Richfield moves to amend Findings 5, 6, 12, 27, 28, 30, 33, 34, 39, 45, 46, 47 and 48 to strike therefrom all references to any oral contracts, agreements or under-

standings between Richfield and the operator of any L-O service station.

Said motion is made upon the ground and for the reason that said portions of said Findings are clearly erroneous in that they are contrary to the uncontradicted evidence to the effect that there is no oral agreement between Richfield and the operator of any L-O station; and that, on the contrary, each L-O operator is *instructed* orally with respect to the various and detailed requirements imposed by Richfield as conditions upon the L-O operator's occupancy of Richfield L-O stations.

2. Richfield moves to amend Findings 5, 20, 21, 26, 27, 28, 30, 33, 34, 39, 45, 46, 47 and 48 to strike therefrom all references to any oral contracts, agreements or understandings between Richfield and any 337 service station dealer or any 3-C service station dealer.

Said motion is made upon the ground and for the reason that said portions of said Findings are clearly erroneous in that there is no evidence whatsoever of any oral agreement or understanding of any nature between Richfield and any one or more of the 337 type of service station dealers who operate any of the 1361 stations of that type, or between Richfield and any one or more of the 3-C type of service station dealers who operate any of the 261 stations of that type.

3. Richfield moves to amend subparagraph (c) of Finding 5 in such manner to eliminate therefrom the clearly erroneous implication that a written Sales Contract and a written Painting Agreement are made with each 337 dealer.

Said motion is made upon the ground that without such amendment said Finding 5 is contrary to the Stipulation of [fol. 401] Facts (Def. Ex. L and Pl. Ex. 26-A, pp. 28-29). For example, as of December 31, 1950, a Painting Agreement was made concurrently with the Sales Contract with only 853 out of a total of 1361 stations of the 337 type.

4. Richfield moves to amend Finding 10 by striking therefrom the following portion thereof, to wit:

> "The L-O operator is solely responsible for his own acts and for those of any of his employees which may cause damage to the person or property of others."

Said motion is made upon the ground that said Finding is clearly erroneous and that there is no evidence whatsoever in support thereof.

5. Richfield moves to amend the first sentence of Finding 12 to state that the 24-hour cancellation clause was inserted in the Form 542 lease with the intent and purpose of enabling Richfield to fully control the operation and maintenance of the L-O stations including, but not limited to, the control of the type of petroleum and other products handled and sold therein.

Said motion is made upon the ground that the first sentence of Finding 12 is a part truth only; and that the same is clearly erroneous to the extent that it implies that the 24-hour cancellation clause was intended for the sole purpose of controlling the petroleum products and automotive accessories handled and sold at the L-O stations.

6. Richfield moves to strike the following portion of Finding 12, to-wit:

> "The 24-hour cancellation clause was never used by Richfield as a means of terminating the lease for the infraction of any of its express conditions. The tenancy of the L-O independent operator was of unlimited duration as long as the provisions of the oral agree- [fol. 402] ments as to exclusive dealing in Richfield petroleum products or automotoive accessories were complied with."

Said motion is made upon the ground that said quoted provisions are clearly erroneous and are not supported by any evidence whatsoever, and, indeed, are contrary to the uncontradicted evidence.

7. Richfield moves to amend Finding 13 by striking therefrom the following portion thereof, to-wit:

> "The practical and intended purpose and effect of the minimum provision of the type of sales contract represented by plaintiff's exhibit 3B was to require the independent operator to purchase all of the petroleum products sold by the operator at the service station covered by the lease and sublease referred to in (1) and (2) herein from Richfield."

Said motion is made upon the ground that the same is clearly erroneous in that it is not supported by any evidence whatsoever and is contrary to the plain provisions of the Sales Contract and to the evidence.

8. Richfield moves to amend Finding 14 to set forth in accordance with the Stipulation of Facts (Def. Ex. A) and the uncontradicted evidence that the form of Sales Contract providing for the sale of the dealer's "requirements" of petroleum products was used with 3-C service station dealers only until August 1948, at which time Richfield discontinued such use on the advice of its legal counsel, promptly following the decision by Judge Yankwich in the case of *United States* v. *Standard Oil Company of California,* and in order to comply with the principle of law there announced; and that Richfield at such time negotiated for the modification of all such "requirements" contracts then in effect by the elimination therefrom of the [fol. 403] "requirements" clause and has succeeded in amending all of them with the exception of four.

Said motion is made upon the ground that without such amendment the Finding is clearly erroneous and contrary to the Stipulation of Facts.

9. Richfield moves to amend Finding 19 by striking therefrom the following sentence, to-wit:

> "The minimum quantities of gasoline, lubricating oils, and greases which the independent operator is required to purchase under the operator's sales contract (represented by plaintiff's exhibit 4C), are determined by Richfield and are usually fixed by it at 80 per cent of the anticipated requirements of the independent operator."

Said motion is made upon the ground that Finding 19 is clearly erroneous, the uncontradicted evidence being that Richfield salesmen were instructed that in the use of said form of Sales Contract they were to negotiate with the 3-C dealer for the quantity which the dealer desired to buy, subject to the qualification that the dealer was not to be permitted to obligate himself to buy a quantity in excess of eighty-five per cent (85%) (subsequently reduced to seventy-five per cent (75%)) of the dealer's past known purchases of petroleum products.

10. Richfield moves to amend Finding 19 by striking therefrom the following sentence, to-wit:

> "The practical and intended purpose and effect of this minimum-maximum provision is to require the independent 3-C operator to purchase from Richfield all of the petroleum products sold by him at his service station."

Said motion is made upon the ground that the same is [fol. 404] clearly erroneous in that it is not supported by any evidence whatsoever and is contrary to all of the evidence concerning both the purpose and effect of the quantity provision in said Sales Contract (Pl. Ex. 4-C).

11. Richfield moves to amend Finding 24 by striking therefrom the following portion thereof, to-wit:

> ". . . and the minimum requirement provisions contained in plaintiff's exhibits 5D and 5G were fixed and determined by Richfield, and the practical and intended purpose and effect of said provisions has been to require the 337 independent service station operator to secure his entire requirements of petroleum products from Richfield."

Said motion is made upon the ground that said portion of Finding 24 is clearly erroneous in that it is not supported by any evidence whatsoever and is contrary to the clear and uncontradicted evidence.

12. Richfield moves to amend Finding 26 by striking therefrom the following portion thereof, to-wit:

> "The obligation of the independent operator to pay for the cost of painting in the event the sales contract is terminated by him prior to the expiration of the term thereof was intended to and has had the effect of compelling the independent operator to purchase all of his requirements of petroleum products and automotive accessories from or through Richfield. The painting agreements and the oral agreements and understandings supplementing the same have had the intended effect of shutting out all competition for the petroleum products and automotive accessory business of the 377 independent service station operator."

[fol. 405] Said motion is made upon the ground that said portion of Finding 26 is clearly erroneous in that there is no evidence whatsoever in support thereof and, on the contrary, the uncontradicted evidence with respect to purpose or intent is: (Tr. 1759 et seq.)

(a) That Richfield's competitors offer to paint the stations of the potential customers, i. e., the 337 dealers, without cost and that Richfield must do the same in order to meet the competition of such competitors;

(b) That the 337 dealers demand the painting of their station without cost to them as a condition to purchasing any petroleum products from Richfield; and

(c) That under such circumstances, Richfield is willing to paint the service station of the 337 dealer without charge and without the right to collect for the cost of such painting, excepting in the limited circumstances specified in the Painting Agreement;

and the uncontradicted evidence with respect to the effect of the Painting Agreement is:

(a) That 75% of all 337 dealers handle, display and advertise non-Richfield lubricating oils and greases and also handle, display and advertise automotive accessories not approved or sponsored by Richfield (Tr. 1897); and

(b) That although the 337 dealers have not handled non-Richfield gasoline during the time they handled Richfield gasoline, nevertheless this fact resulted from the desire of the 337 dealers; and further, that 337 deal-[fol. 406] ers very often discontinued all purchases of Richfield gasoline from Richfield prior to the expiration of their 337 Sales Contract (Tr. 1773); and

(c) That during the period from January 1, 1946, to December 31, 1950, out of a total of 514 of such accounts lost, 407 (or approximately 80% thereof) were lost prior to the expiration of the Sales Contract and approximately 75% of such 407 accounts so lost in such manner had accompanying Painting Agreements. (Def. Ex. X)

13. Richfield moves to amend Finding 27 by striking therefrom the following portion, to wit:

> ". . . and each independent operator is an independent business man."

Said motion is made upon the ground that said portion of the Finding, in so far as it pertains to any of the L. O. operators, is clearly erroneous and is not supported by the evidence and is contrary thereto.

14. Richfield moves to amend Finding 28 by striking therefrom all references to the 3-C dealers, the 337 dealers and the 3-C and 337 stations.

Said motion is made upon the ground that Finding 28, in so far as it pertains to 3-C and 337 dealers and stations, is clearly erroneous and is not supported by the evidence and is contrary thereto.

15. Richfield moves to amend Finding 29 to limit the same to the 1343 L. O. stations.

Said motion is made upon the ground that without such limitation Finding 29 is clearly erroneous and is not supported by the evidence and is contrary thereto.

16. Richfield moves to amend Finding 32 to make the same conform to the Stipulation of Facts in so far as concerns the [fol. 407] reference to exhibits 4-A, 4-B, 4-C and 4-D.

Said motion is made upon the same ground as that contained in Richfield's motion number 8 hereinabove.

17. Richfield moves to amend Finding 39 to except and exclude therefrom any application of said Finding to the 3-C or 337 dealers and stations.

Said motion is made upon the ground that there is no evidence to support such Finding, except in so far as the same relates to L. O. stations, and that said Finding is contrary to the clear and uncontradicted evidence.

18. Richfield moves to amend the last sentence of Finding 45 to except and exclude therefrom any application of said Finding to the 3-C or 337 dealers and stations.

Said motion is made upon the ground that there is no evidence to support such Finding, except in so far as the same relates to L. O. stations, and that said Finding is contrary to the clear and uncontradicted evidence.

19. Richfield moves to amend Findings 46, 47 and 48 to

except and exclude therefrom any application of said Findings to the 3-C or 337 dealers and stations.

Said motion is made upon the ground that there is no evidence to support such Findings, except in so far as the same relate to L. O. stations, and that said Findings are contrary to the clear and uncontradicted evidence.

B. Richfield Moves That the Court Make the Following Additional Findings of Material Facts Re the L. O. Stations. Said Motion Is Made Upon the Ground That Each of the Following Additional Findings Is Supported by Uncontradicted Evidence and Is Material to the Issues Raised by the Pleadings:

1. Findings with respect to Richfield's business purpose in the acquisition and maintenance of the L. O. stations:

[fol. 408] (a) Richfield's business purpose and intent in the acquisition and maintenance of L. O. stations has been to provide a stable outlet for the petroleum products produced by it (Tr. 1687);

(b) The intense competition in Richfield's marketing area for the business of independent service station dealers who own or lease their respective service stations is such that, notwithstanding Richfield's constant solicitation of such business, Richfield cannot depend thereon as a stable outlet for the sale of its petroleum products (Tr. 1687-1689);

(c) Richfield's need for service station outlets has greatly increased since the termination of World War II due to the following factors (Tr. 1689-1692):

(i) During World War II Richfield's refinery capacity for the manufacture of motor gasoline was increased 32.5% (or the equivalent of 10,705 barrels of motor gasoline per day, or approximately 13,500,000 gallons per month) as the result of the installation by Richfield at the request of the United States Government of additional refinery facilities at an expenditure of approximately $20,000,000 (Def. Ex. AC, AE, AE-1, AE-2, AE-3 and AF);

(ii) Immediately following V-J Day in the fall of 1945, the United States Government reduced its pur-

chases of gasoline from Richfield from 17,000 barrels per day to 2,000 to 3,000 barrels per day (Tr. 2039); [fol. 409] (iii) Richfield discovered new oil fields (Tr. 1691);

(iv) There was a substantial increase in the demand for petroleum products due to vast increase in population on Pacific Coast (Tr. 1691 and Def. Ex. M-13);

(d) To satisfy such need for outlets for its production of petroleum products, Richfield during the period following 1946 acquired properties by lease and purchase, 90% of which were unimproved and vacant sites; and Richfield constructed service stations thereon. As of December 31, 1950, Richfield's investment in service station properties and improvements thereon was approximately $19,500,000 (Tr. 1692-1697, Def. Ex. AB);

(e) Notwithstanding such acquisition and investment, the number of Richfield's L. O. service stations has not increased during the past decade; and Richfield had fewer L. O. service stations as of December 31, 1950, than it had as of December 31, 1941 (Def. Ex. M-4, Tr. 1697);

(f) As of December 31, 1950, 1,092 L. O. stations, representing in excess of 81% of the total number of 1,343 L. O. stations owned or leased by Richfield, were self-created stations, i. e., stations built by Richfield or by the property owners under agreement with Richfield on sites which had never theretofore been used or equipped as service stations handling any petroleum products.

2. Findings with respect to Richfield's relationship with the L. O. operators:

(a) In selecting operators for its L. O. stations, Rich- [fol. 410] field made it a practice to investigate their character, reputation, family background and like qualities, and has interviewed various applicants and has required the use by them of application forms to secure such information (Tr. 1689-1699, Stip. of Facts, Def. Ex. A);

(b) Few, if any, of the L. O. operators had been independent dealers established in business in service stations owned or leased by them prior to becoming operators in Richfield's L. O. stations (Tr. 1698-1699);

(c) Prior to installation in one of Richfield's L. O. stations, the prospective operator is thoroughly instructed and informed of Richfield's requirements and practices concerning the following matters (Tr. 1920-1937):

(i) Richfield's requirement that operator and his helpers wear approved Richfield uniforms;

(ii) Richfield's requirement of a minimum crew of employees and helpers;

(iii) Richfield's requirement as to the hours the station is to remain open;

(iv) Richfield's requirement of the personal cleanliness and appearance of operator and his helpers;

(v) Richfield's requirement of use of specified pump island procedure and manner of dealing with public;

(vi) Richfield's requirement of the handling of Richfield products exclusively;

(vii) Richfield's requirement of the securing of [fol. 411] approved TBA from Richfield's local distributor if the latter is able to supply the operator;

(viii) Richfield's instructions as to how to order petroleum products;

(ix) Richfield's instructions concerning the procedure in use of Richfield's credit cards;

(x) Richfield's instructions against display of unapproved or competitive signs;

(xi) Richfield's instructions to operator to attend training meetings;

(xii) Richfield's practices whereby Richfield's merchandiser will from time to time, not less frequently than once every sixty days, inspect station and operator's maintenance and operating methods and instruct him on any matters determined to be corrected;

(xiii) Richfield's requirement that incoming

operator acquire from outgoing operator Richfield petroleum products, TBA items approved by Richfield and service station tools approved by Richfield and that incoming operator not acquire other items from outgoing operator.

(xiv) Richfield's practice and obligation in assisting operator in disposing of such approved items of petroleum products, TBA and equipment on termination of operator's tenure;

(xv) Richfield's practice and instructions that [fol. 412] operator does not acquire or develop any good will and shall not be permitted to charge for any intangible value to his successor on termination of his tenure;

(xvi) The existence and explanation of 24-hour termination clause in the Form 542 lease which is available to either party, and Richfield's reason for requiring the same as protection of its property, investment and merchandising program;

(d) Upon installation of L. O. operator, Richfield's merchandiser instructs him for a minimum of five days; and thereafter the merchandiser calls on the operator from two days a week to once a month, using an itemized form as a training guide; and every sixty days the merchandiser checks in detail on a printed form the compliance by the L. O. operator with the merchandiser's instructions (Tr. 1937-1939, Def. Exs. C and V);

(e) L. O. operators are at times promoted from one station to another or to the Company's Marketing Department (Tr. 99, 1364, 1937);

(f) It has been Richfield's practice that the following circumstances have warranted Richfield's terminating the tenure of an L. O. operator, i. e., insufficient crew, failure to maintain sufficient inventory, operation of a dirty station, failure to maintain sufficient operating hours, absentee operation or failure to carry Richfield products exclusively (Tr. 1943-1944);

(g) Richfield extends financial assistance to L. O. operators as follows:

[fol. 413] (i) Richfield subleases to L. O. operators fully equipped service stations (excepting only small tools and lubricating equipment) at a rental substantially less than the fair rental value thereof (Tr. 1704-1705, 1981-1982). As to stations leased rather than owned by Richfield, Richfield pays rentals to the property owners substantially in excess of those collected from the L. O. operators and in this respect absorbs a rental expense of approximately one-third of the total rentals paid (Def. Ex. AA);

(ii) Richfield has maintained a practice of reducing the L. O. operator's rentals whenever the operator has experienced difficulty in developing a satisfactory volume of business (Tr. 1699-1701);

(iii) Richfield subsidizes L. O. operators during "price wars" to the extent of their full margin of profit if they reduce prices to meet competition (Tr. 1708-1710; 1817; Def. Ex. F);

(iv) Richfield has made a practice of loaning money to L. O. operators so that they can carry adequate inventories of petroleum products (Tr. 1703 et seq.).

3. In light of the facts enumerated in proposed Findings 1 and 2 above, the L. O. operators are not independent businessmen (whether or not they be determined to be independent contractors); and the trade and custom of the L. O. operators is Richfield's trade and custom; and the L. O. operators do not constitute a legitimate market for Richfield's competitors.

4. If the business of the L. O. operators be validly deter-
[fol. 414] mined to be a legitimate market for Richfield's competitors, nevertheless restraints imposed by Richfield upon the petroleum products and automotive accessories handled by the L. O. operators in Richfield's L. O. stations are not unreasonable restraints of trade under §1 of the Sherman Act because of the following facts which are found to exist:

(a) Richfield does not have a position of dominating power in the petroleum products industry or in the

automotive accessories industry in the Western area (Def. Exs. M-4 to M-12, incl., and Def. Ex. Z);

(b) The Form 542 sublease used with each L. O. operator is not unreasonable in duration, being terminable by either party thereto on 24-hours' notice (Pl. Exs. 1-B, 1-D, 1-E and 1-G);

(c) The public interest has not been harmed or adversely affected (Def. Ex. M-13);

(d) The effect of Richfield's contracts with its L. O. operators has not been to unreasonably restrict the opportunity of Richfield's competitors to market their products;

(e) In excess of 81% of the L. O. stations were self-created by Richfield (Def. Ex. W);

(f) Richfield's actions with respect to the acquisition and maintenance of L. O. stations and the leasing thereof to L. O. operators in the manner and upon the terms described in the foregoing Findings spring from business requirements and not from any purpose or intention of Richfield to monopolize trade or commerce or to suppress or otherwise affect competition or its competitors.

5. If the business of the L. O. operators be validly determined to be a legitimate market for Richfield's competitors, [fol. 415] nevertheless for the reasons and upon the grounds stated in proposed Finding 4, Richfield's contracts with its L. O. operators do not substantially lessen competition or tend to create a monopoly in any line of commerce under §3 of the Clayton Act.

6. If the business of the L. O. operators be validly determined to be a legitimate market for Richfield's competitors, nevertheless the business of said L. O. stations is not a substantial share of the line of commerce affected, as illustrated by the following facts:

(a) As of December 31, 1950, the volume of gasoline sold at the L. O. stations constituted 2.71% of the total quantity of gasoline manufactured by companies in the six states in the Western area (Def. Ex. Z);

(b) As of December 31, 1948, the number of Rich-

field L. O. stations constituted 3.28% of all service stations of all companies in the Western area (exclusive of Idaho) (Def. Ex. M-4);

(c) As of December 31, 1950, the volume of gasoline sold at the L. O. stations constituted 4.90% of the total volume of gasoline sold by all companies to all service stations in the Western area (exclusive of Idaho) (Def. Ex. M-5);

(d) As of December 31, 1950, the volume of gasoline sold at the L. O. stations constituted 3.18% of the volume of taxable sales of motor vehicle fuel by all companies in the Western area (Def. Ex. F-5);

(e) During the calendar year 1950 Richfield's total sales of motor fuel, including sales to L. O., 3-C and 337 stations and all other taxable sales, constituted 7.3% of the total taxable motor fuel sales of all companies in the Western area (Def. Ex. M-7);

[fol. 416] (f) During the year 1947 Richfield's sales of lubricating oil to service stations of all types in the Western area constituted 2.39% of the total volume of lubricating oil sold by all companies in that area. (Def. Ex. M-10);

(g) During the year 1947 the volume of tires sold to L. O., 3-C and 337 stations by Richfield and by Richfield's TBA distributors constituted 1.02% of the total tires sold in the Western area (Def. Ex. M-11);

(h) During the year 1947 the volume of batteries sold to L. O., 3-C and 337 stations by Richfield and by Richfield's TBA distributors constituted 1.27% of the total batteries sold in the Western area (Def. Ex. M-12).

C. Richfield Moves that the Court Make the Following Additional Findings of Material Facts Re the 3-C and 337 Stations. Said Motion Is Made upon the Ground that Each of the Following Additional Findings Is Supported by Uncontradicted Evidence and Is Material to the Issues Raised by the Pleadings:

1. The Sales Contracts between Richfield and the 3-C and 337 dealers (excepting only those four Sales Contracts with

the 3-C dealers which contain a "requirements" provision) do not obligate or require the 3-C or 337 dealer to purchase all of his requirements of petroleum products from Richfield [fol. 417] (Stipulation of Facts, Def. Ex. A). The quantities which the 3-C and 337 dealers agreed in their respective Sales Contracts to purchase from Richfield were substantially less than the dealers' anticipated requirements of petroleum products as of the dates when the dealers signed their respective Sales Contracts.

Richfield had in effect as of February 28, 1951, a total of 1,640 Sales Contracts with 3-C and 337 dealers and the following Table segregates said contracts into four classes on the basis of the ratio which the quantity of gasoline that the dealer obligated himself to purchase under his Sales Contract bears to such dealer's average monthly purchases for the year preceding the date of the contracts. Column (1) specifies the ratio, column (2) specifies the number of contracts falling in each ratio group and column (3) specifies the percentage of total contracts in each ratio group.

(1) Contract Groups	(2) Number of Sales Contracts	(3) Percent Each Group Bears to Total Number of Sales Contracts
Group A—less than 75%	408	25%
Group B—75% to 79%, incl.	458	28%
Group C—80% to 89%, incl.	560	34%
Group D—90% and over	214	13%

(Def. Ex. Y)

2. Richfield did not execute a Painting Agreement with each 337 dealer. In a large percentage of instances no Painting Agreement was entered into at all with the 337 dealer with whom a Sales Contract was made. (See column 1 below.) In a large percentage of other instances a Sales Contract was made with the 337 dealer without any accompanying Painting Agreement, and subsequently a Painting Agreement was entered into at the time the dealer requested [fol. 418] that his station be painted. (See column 3 below.) Column 2 below represents the number of Sales Contracts which were accompanied by Painting Agreements made at the same time.

December 31st of	(1)	(2)	(3)
1938	109	349	98
1939	119	380	107
1940	121	385	109
1941	139	444	125
1942	93	298	84
1943	119	379	107
1944	123	394	112
1945	173	552	156
1946	205	656	185
1947	208	665	188
1948	223	712	201
1949	236	755	213
1950	267	853	241

(Def. Ex. L and Pl. Ex. 26-A, pp. 28-29)

3. During the period from January 1, 1946, to December 31, 1950, Richfield lost the business of 514 dealers who were purchasing petroleum products from Richfield under the provisions of Form 337 Sales Contracts. The following tabulation shows the number of such accounts lost at the expiration of the Sales Contracts and the number lost prior to the expiration of the Sales Contracts; and said tabulation also shows the number of accounts of each class which had Painting Agreements in existence and the number which had no such Painting Agreements in existence.

(See Table on following page.)

[fol. 419]

Number Lost at Expiration of Contract Painting Agreement in Existence at Time of Loss			Number Lost Prior to Expiration of Contract Painting Agreement in Existence at Time of Loss			Total Number Lost Painting Agreement in Existence at Time of Loss		
Yes	No	Total	Yes	No	Total	Yes	No	Total
81	26	107	303	104	407	384	130	514

(Def. Ex. X)

4. Richfield's contracts and agreements with the 3-C dealers and the 337 dealers are not unreasonable restraints of trade under §1 of the Sherman Act because of the following facts which are found to exist:

(a) The contracts provide for the purchase by the respective dealers of specified quantities of petroleum products and do not prevent or preclude any of such dealers from purchasing additional quantities of the

same products from any and all competitors of defendant;

(b) Not less than 75% of all of the 3-C and 337 dealers handle, openly advertise and display, and sell non-Richfield petroleum products and non-approved automotive accessories;

(c) Richfield does not have a position of dominating power in the petroleum products industry or in the automotive accessories industry in the Western area; (Def. Exs. M-4 to M-12, incl. and Def. Ex. Z)

(d) The 337 Sales Contract is not unreasonable in duration, being terminable by either party thereto on thirty days' written notice; (Pl. Exs. 5-D and 4-G)

(e) The public interest has not been harmed or adversely affected; (Def. Ex. M-13)

[fol. 420] (f) The effect of Richfield's contracts with the 337 dealers has not been to unreasonably restrict the opportunity of Richfield's competitors to market their products;

(g) The effect of Richfield's contracts with the 3-C dealers has not been to unreasonably restrict the opportunity of Richfield's competitors to market their products;

(h) Richfield's actions with respect to the 337 dealers and the 3-C dealers sprang from business requirements and not from any purpose or intention of Richfield to monopolize trade or commerce or to suppress or otherwise affect competition or its competitors.

5. For the reason and upon the grounds stated in proposed Finding 4, Richfield's contracts with the 337 dealers do not substantially lessen competition or tend to create a monopoly in any line of commerce under Sec. 3 of the Clayton Act.

6. For the reasons and upon the grounds stated in proposed Finding 4, Richfield's contracts with the 3-C dealers do not substantially lessen competition or tend to create a monopoly in any line of commerce under Sec. 3 of the Clayton Act.

7. The number of contracts and the volume of business done by Richfield with 337 dealers is not a substantial share

of the line of commerce affected, as illustrated by the following facts:

(a) As of December 31, 1950, the volume of gasoline sold by Richfield to the 337 stations constituted 1.14% of the total quantity of gasoline manufactured by companies in the six states in the Western area (Def. Ex. Z);

(b) As of December 31, 1948, the number of 337 stations constituted 3.08% of all service stations of all [fol. 421] companies in the Western area (exclusive of Idaho) (Def. Ex. M-4);

(c) As of December 31, 1950, the volume of gasoline sold by Richfield to 337 stations constituted 2.03% of the total volume of gasoline sold by all companies to all service stations in the Western area (exclusive of Idaho) (Def. Ex. M-5);

(d) As of December 31, 1950, the volume of gasoline sold by Richfield to 337 stations constituted 1.33% of the volume of taxable sales of motor vehicle fuel by all companies in the Western area (Def. Ex. M-5).

8. The number of contracts and the volume of business done by Richfield with 3-C dealers is not a substantial share of the line of commerce affected, as illustrated by the following facts:

(a) As of December 31, 1950, the volume of gasoline sold at the 3-C stations constituted .34% of the total quantity of gasoline manufactured by companies in the six states in the Western area (Def. Ex. Z);

(b) As of December 31, 1948, the number of 3-C stations constituted .70% of all service stations of all companies in the Western area (exclusive of Idaho) (Def. Ex. M-4);

(c) As of December 31, 1950, the volume of gasoline sold by Richfield to 3-C stations constituted .63% of the total volume of gasoline sold by all companies to all service stations in the Western area (exclusive of Idaho) (Def. Ex. M-5);

(d) As of December 31, 1950, the volume of gasoline [fol. 422] sold by Richfield to 3-C stations constituted

.40% of the volume of taxable sales of motor vehicle fuel by all companies in the Western area (Def. Ex. M-5).

II

Conclusions of Law

1. Richfield moves to amend the Conclusions of Law numbers 1 to 4, inclusive, and 6 to 11, inclusive, to eliminate therefrom all references to oral contracts or agreements or understandings.

Said motion is made upon the ground that the evidence does not support any Finding or Conclusion concerning or based upon the existence of any oral contracts, agreements or understandings.

2. Richfield moves to amend the Conclusions of Law by striking therefrom paragraph 5 thereof upon the grounds:

(a) That the jurisdiction of this Court is based upon the Acts of Congress known as the Sherman and Clayton Anti-Trust Laws (see paragraph 1 of the complaint herein); and that any determination concerning the validity under state law or so-called federal law (other than said Sherman and Clayton Anti-Trust Laws) of the 24-hour termination clause contained in the L. O. lease form is beyond the jurisdiction or power of this Court;

(b) That there is and can be no issue in this cause concerning the validity under state law or so-called federal law (other than the Sherman and Clayton Anti-Trust Laws) of the 24-hour termination clause contained in the L. O. lease forms;

(c) That any reference therein contained to the [fol. 423] validity of the 24-hour termination clause under either state or federal law (other than the Sherman and Clayton Anti-Trust Laws) is erroneous and contrary to law.

III

Final Judgment

1. Richfield moves that the Final Judgment be amended by the elimination from paragraphs II, III, IV, V, and VII

of said Final Judgment of all references to oral contracts or agreements or understandings.

Said motion is made upon the ground that the evidence does not support any Finding or Conclusion or Judgment concerning or based upon the existence of any oral contracts, agreements or understandings.

2. Richfield moves to amend paragraph VI of the Final Judgment to eliminate therefrom the first sentence thereof which enjoins Richfield from exercising the 24-hour termination clause contained in any L. O. lease, and enjoins Richfield from cancelling any L. O. lease on less than thirty (30) days' notice.

Said motion is made upon the ground that such provision of the Final Judgment cannot be lawfully predicated or found upon any violation of either the Sherman or Clayton Anti-Trust Laws, but must be founded, if at all, upon an assumed violation of "state or federal law" as determined in Conclusion of Law number 5. Any determination concerning the validity under state law or so-called federal law (other than said Sherman and Clayton Anti-Trust Laws) of the 24-hour termination clause contained in the L. O. lease form is beyond the power and jurisdiction of this Court.

3. Richfield moves to amend paragraph VI of the Final Judgment to eliminate therefrom the second sentence thereof to the extent that it enjoins Richfield's cancellation [fol. 424] of any L. O. lease excepting "only for a breach of any of the written covenants contained in any written lease."

Said motion is made upon the grounds:

(a) The portion of the Final Judgment so complained of constitutes a taking of Richfield's property without compensation and without due process of law. It prevents Richfield from ever retaking possession of its property pursuant to its lawful contract rights. None of the L. O. leases contain any expiration date or fixed term, and accordingly none will automatically expire by its own terms unless terminated by either party thereto pursuant to the 24-hour termination clause contained in each L. O. lease. The portion of

the Final Judgment complained of in this motion will, in effect, require Richfield to continue to lease to the 1361 L. O. operators the respective stations occupied by them for an indefinite and unlimited time in the future and at a rental substantially less than the fair rental value of such stations; and

(b) The portion of the Final Judgment above complained of is unreasonable for the reasons above stated.

4. Richfield moves to amend the Final Judgment by the inclusion as a provision thereof of the following paragraph which was included and embodied in the Final Judgment by this Court in *United States* v. *Standard Oil Company of California*, No. 6159-Y, filed June 30, 1948, (78 Fed. Supp. 850, affirmed 337 U. S. 293, 93 L. ed. 1371), to wit:

"IX

Nothing contained in this judgment shall enjoin or restrain defendant from selling or contracting to sell petroleum products and/or automotive accessories including such products as are sponsored by defendant, [fol. 425] to independent dealers on the condition that any pump or tank or other container or receptacle for such products, furnished by defendant and marked as such to an independent dealer, shall be used solely for the storing, handling or dispensing of defendant's petroleum products and to prescribe by agreement or regulations not inconsistent with the provisions of this decree, for the storage, handling or dispensing of such products."

Said motion is made upon the ground that throughout the trial of the above entitled cause, plaintiff has asserted, and in the Opinion in this cause filed July 2, 1951, this Court has determined, that the agreements involved in this case "are of the type condemned by the decision" in *United States* v. *Standard Oil Company of California* (supra). If such contention and determination be warranted or true, the Final Judgment in this cause should not be more onerous than the judgment of the same Court against Standard Oil Company of California; and the Final Judgment in this cause should not enjoin Richfield from engaging in any of

the important competitive marketing practices which Richfield's largest competitor, Standard Oil Company of California, is expressly permitted to engage in by the provision in the judgment in the Standard Oil case referred to above.

Dated: August 10, 1951.

Respectfully submitted, William J. DeMartini, Robert E. Paradise, by Robert E. Paradise, Attorneys for Defendant.

[fol. 426] Acknowledgment of service (omitted in printing).

[fol. 427] In United States District Court

[Title omitted]

Minute Entry—August 17, 1951

Nature of Proceedings: Hearing (1) motion of def't filed Aug. 10, 1951, for amendment to findings, conclusions, and judgment; (2) motion of def't filed Aug. 14, 1951, for retaxing costs; Counsel argue to Court.

Ruling: Ordered: each motion denied.

[fol. 428] [File endorsement omitted]

In United States District Court

[Title omitted]

Petition for Appeal—Filed September 4, 1951

Richfield Oil Corporation, defendant in the above entitled cause, considering itself aggrieved by the Final Judgment of this Court made and entered on August 2, 1951, does hereby pray that an appeal be allowed from said Final Judgment to the Supreme Court of the United States.

Pursuant to Rule 12 of the Revised Rules of the Supreme Court of the United States, as amended, defendant presents to this Court herewith a statement particularly disclosing

the basis upon which the Supreme Court has jurisdiction upon appeal to review the Final Judgment in this cause.

The particulars wherein defendant considers the judgment erroneous are set forth in the Assignment of Errors [fol. 429] and Prayer for Reversal accompanying this petition, and to which reference is hereby made.

Defendant prays that its appeal may be allowed to the Supreme Court of the United States and that citation be issued as provided by law, and that the amount of an appeal bond be fixed and said bond be approved, and that a transcript of the records, proceedings and documents upon which said Final Judgment was based, duly authenticated, be sent to the Supreme Court of the United States under the rules of said court in such cases made and provided.

Dated: September 4, 1951.

William J. DeMartini, Robert E. Paradise, Attorneys for Defendant.

Krystal & Paradise, of Counsel.

[fols. 430-484] Bond on appeal for $1000 approved and Filed September 4, 1951, omitted in printing.

[fol. 485] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS AND PRAYER FOR REVERSAL—Filed September 4, 1951

Defendant, Richfield Oil Corporation (herein called "Richfield"), in connection with its Petition for Appeal to the Supreme Court of the United States, hereby assigns the following errors in the above entitled cause:

[fol. 486] I

Assignment of Errors Relating to Richfield's L. O. (Leased Out) Stations *

(1) The District Court erred in its determination that restrictions imposed by Richfield upon the operators of Richfield's L. O. stations are within the scope of and cognizable under § 1 of the Sherman Act and § 3 of the Clayton Act, notwithstanding a clear showing by the entire record that:

(a) The nature of Richfield's interest in the L. O. stations and the nature of Richfield's relationship with the L. O. operators is such that the trade and custom of the L. O. stations as operated by the L. O. operators is Richfield's trade and custom and is not the subject

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* The case involves three entirely separate and distinct types of service stations: (1) *L. O. stations* which are service stations owned by Richfield or leased by Richfield from a party other than the operator thereof, and thereafter leased by Richfield to an operator under a written lease agreement for an indefinite period of time, subject to termination by either Richfield or the L. O. operator on twenty-four (24) hours' notice. (2) *Dealer stations—337* which are owned by the 337 dealer or leased by him from a lessor other than Richfield. Richfield has entered into a written Sales Contract covering petroleum products with each of the 337 dealers; and in some instances has entered into written Painting Agreements with such dealers. (3) *Dealer stations 3-C* which are owned by the 3-C dealer or leased by him from a lessor other than Richfield. Here, in addition to a written Sales Contract with Richfield, the 3-C dealer has leased his station to Richfield and has taken a sublease back, both on Richfield's printed forms.

The distinction between the three types of service stations has been recognized in the pleadings and throughout the trial and in the Findings of Fact, Conclusions of Law and Final Judgment.

The Assignments of Error will be directed to: I—the L. O. stations and II—the Dealer stations (including both the 337 and 3-C stations).

matter of competition between Richfield and its competitors, and is not a legitimate market for Richfield's competitiors;

[fol. 487] (b) The nature of Richfield's relationship with the L. O. operators is analogous to the relationship of agency or the relationship of employment for the purposes of and within the scope of § 1 of the Sherman Act and § 3 of the Clayton Act; and

(c) The L. O. operators are not independent businessmen for the purposes of and within the scope of § 1 of the Sherman Act and § 3 of the Clayton Act.

(2) The District Court erred in its determinations that the agreements between Richfield and the L. O. operators are of the type condemned by the decision in *Standard Oil Company of California v. United States*, 337 U. S. 293; 93 L. Ed. 1371.

(3) The District Court erred in making the following Findings of Fact concerning the L. O. stations, which Findings are clearly erroneous in view of the entire evidence in the record:

(a) Finding 10 that the L. O. operator is solely responsible for his own acts and for those of his employees which may cause damage to the person or property of others;

(b) Finding 27 that each L. O. operator is an independent businessman; and

[fol. 488] (c) Finding 46 that Richfield's L. O. service stations represent a market for the manufacturers, producers and sellers of petroleum products and automotive accessories competitive to those sold or distributed by Richfield.

(4) The District Court erred in determining the following Conclusions of Law in so far as the same concern the L. O. stations:

(a) Conclusion 2 that the contracts, agreements and understandings between Richfield and the L. O. operators unreasonably restrain interstate commerce in violation of § 1 of the Sherman Act;

(b) Conclusion 3 that the contracts, agreements and

understandings between Richfield and the L. O. operators substantially lessen competition and tend to create a monopoly in violation of § 3 of the Clayton Act;

(c) Conclusion 5 that the 24-hour termination clause in the L. O. lease is invalid and against public policy and violates both state and federal law; and that the L. O. lease cannot be terminated by any notice by either side of less than one month;

(d) Conclusion 6 that the contracts, agreements and understandings between Richfield and the L. O. operators have the necessary and intended effect of foreclosing competition in the sale of petroleum products and automotive accessories from a substantial market for such products;

(e) Conclusion 7 that the contracts, agreements and understandings between Richfield and the L. O. operators unreasonably restrain and substantially lessen competition in an appreciable segment of interstate commerce;

(f) Conclusion 9 that the contracts, agreements and understandings between Richfield and the L. O. operators have the necessary and intended effect of deny-[fol. 489] ing manufacturers and suppliers of competitive products access to a substantial number of potential outlets for the sale of their products;

(g) Conclusion 10 that the number of L. O. stations and the volume of business in petroleum products and automotive accessories in such L. O. stations is substantial whether considered comparatively or not.

(5) The District Court erred in failing to make the following Findings of material facts with respect to Richfield's relationship with the L. O. operators, each of which Findings is supported by the uncontradicted evidence and is material to the issues raised by the pleadings:

(a) In selecting operators for its L. O. stations, Richfield has made it a practice to investigate their character, reputation, family background and like qualities, and has required the use by prospective operators of application forms to secure such information;

(b) Few, if any, of the L. O. operators had been independent dealers established in business in service stations owned or leased by them prior to becoming operators in Richfield's L. O. stations;

(c) Prior to installation in one of Richfield's L. O. stations, the prospective operator is thoroughly instructed and informed of Richfield's requirements and practices at its L. O. stations concerning the following matters:

(i) that the operator and his helpers wear approved Richfield uniforms;

(ii) that the station be manned by a minimum crew of helpers;

(iii) that the station remain open certain desig- [fol. 490] nated hours;

(iv) that the operator and his helpers maintain a standard of personal cleanliness and appearance;

(v) that the operator and his helpers maintain designated pump island procedure and a designated manner in dealing with the public;

(vi) that Richfield's petroleum products be handled exclusively;

(vii) that approved automotive accessories be secured from Richfield's local distributor if the latter is able to supply the operator;

(viii) that Richfield's instructions concerning the procedure in use of Richfield's credit cards be followed;

(ix) that the operator not display unapproved or competitive signs;

(x) that the operator attend training meetings;

(xi) that Richfield's merchandisers will periodically, not less frequently than once every sixty days, inspect the station and the operator's maintenance and operating methods and instruct him on any matters determined to be corrected;

(xii) that the incoming operator shall acquire from the outgoing operator the latter's stock of Richfield petroleum products, approved automotive accessories and service station tools approved by

Richfield; and that the incoming operator not acquire other items from the outgoing operator;

(xiii) that Richfield has an obligation to assist [fol. 491] the operator in disposing of such approved items of petroleum products, automotive accessories and equipment on termination of the operator's occupancy;

(xiv) that the operator does not acquire or develop any good will and shall not be permitted to make a charge for any intangible business value to a successor operator;

(d) Prior to installation, the prospective operator is informed of the existence of the 24-hour termination clause in the Form 542 lease which is available to either party, and of Richfield's reason for requiring the same as protection of its property, investment and merchandising program;

(e) Upon installation of an L. O. operator, Richfield's merchandiser instructs him for a minimum of five days, and thereafter the merchandiser calls on the operator from two days a week to once a month, using an itemized form as a training guide; and every sixty days the merchandizer checks in detail on a printed form the compliance by the L. O. operator with the merchandiser's instructions;

(f) L. O. operators are at times promoted from one L. O. station to another or to Richfield's Marketing Department;

(g) It has been Richfield's practice that the following circumstances have warranted Richfield's terminating the tenure of an L. O. operator: i. e., insufficient inventory, operation of a dirty station, failure to maintain sufficient operating hours, absentee operation or failure to carry Richfield products exclusively;

[fol. 492] (h) Richfield extends financial assistance to L. O. operators as follows:

(i) Richfield furnishes to the L. O. operators the instrumentalities for doing business, i.e., fully equipped service stations (excepting only small tools and lubricating equipment) at a rental substantially less than

the fair rental value thereof. Richfield pays to its lessors rentals substantially in excess of those collected from the L. O. operators and in this respect absorbs a rental expense of approximately one-third of the total rentals paid;

(ii) Richfield has maintained a practice of reducing the L. O. operator's rentals whenever the operator has experienced difficulty in developing a satisfactory volume of business;

(iii) Richfield subsidizes L. O. operators during "price wars" to the extent of their full margin of profit if they reduce prices to meet competition; and

(iv) Richfield has made a practice of loaning money to L. O. operators so that they can carry adequate inventories of petroleum products.

(6) The District Court erred in failing to make the following Findings of material facts with respect to Richfield's business purpose in the acquisition and maintenance of the L. O. stations, each of which Findings is supported by the uncontradicted evidence and is material to the issues raised by the pleadings:

(a) Richfield's business purpose and intent in the acquisition and maintenance of L. O. stations has been to provide a stable outlet for the petroleum products produced by it;

[fol. 493] (b) The intense competition in Richfield's marketing area for the business of independent service station dealers who own or lease their respective service stations is such that, notwithstanding Richfield's constant solicitation of such business, Richfield cannot depend thereon as a stable outlet for the sale of its petroleum products;

(c) Richfield's need for service station outlets has greatly increased since the termination of World War II due to the following factors:

(i) During World War II Richfield's refinery capacity for the manufacture of motor gasoline was increased 32.5% (or the equivalent of 10,705 barrels of motor gasoline per day, or approximately 13,500,000 gallons per month) as the result of the installation by Richfield, at the request of the United States govern-

ment, of additional refinery facilities at an expenditure of approximately $20,000,000.00;

(ii) Immediately following V-J Day in the fall of 1945, the United States government reduced its purchases of gasoline from Richfield from 17,000 barrels per day to 2,000 to 3,000 barrels per day;

(iii) Richfield discovered new oil fields; and

(iv) There was a substantial increase in demand for petroleum products due to vast increase in population on the Pacific Coast;

(d) To satisfy such need for outlets for its petroleum products, Richfield, during the period following 1946, acquired properties by lease and purchase, 90% of which were unimproved and vacant sites; and Richfield con- [fol. 494] structed service stations thereon. As of December 31, 1950, Richfield's investment in service station properties and improvements thereon was approximately $19,500,000.00;

(e) Notwithstanding such acquisition and investment, the number of Richfield's L. O. service stations has not increased during the past decade; and Richfield had fewer L. O. service stations as of December 31, 1950, than it had as of December 31, 1941;

(f) As of December 31, 1950, 1,092 L. O. stations, representing in excess of 81% of the total number of 1,343 stations owned or leased by Richfield, were self-created stations, i.e., stations built or caused to be built by Richfield on sites which had never theretofore been used or equipped as service stations handling any petroleum products.

(7) The District Court erred in failing to conclude and determine from the facts set forth in Assignments of Error 5 and 6 hereinabove that the L. O. operators are not independent businessmen (whether or not they be determined to be independent contractors; that the trade and custom of the L. O. stations as operated by the L. O. operators is Richfield's trade and custom; and that neither the L. O. stations nor the L. O. operators constitute a legitimate market for Richfield's competitors or the subject matter of competition.

(8) The District Court erred in failing to make the following additional Findings of material facts, each of which Findings is supported by the uncontradicted evidence and is material to the issues raised by the pleadings:

(a) The effect of Richfield's contracts with its L. O. operators has not been to unreasonably restrict the opportunity of Richfield's competitors to market their products;

[fol. 495] (b) The public interest has not been harmed or adversely affected by Richfield's contracts with its L. O. operators;

(c) Richfield's actions with respect to the acquisition and maintenance of L. O. stations and the leasing thereof to L. O. operators in the manner and upon the terms described in Assignments of Error 5 and 6 above sprang from business requirements and not from any purpose or intention of Richfield to monopolize trade or commerce or to suppress or otherwise affect competition or its competitors;

(d) The Form 542 sublease used with each L. O. operator is not unreasonable in duration, being terminable by either party thereto on 24-hours notice;

(e) Richfield does not have a position of dominating power in the petroleum products industry or in the automotive accessories industry in the Western area;

(f) As of December 31, 1950, the volume of gasoline sold at the L. O. stations constituted 2.71% of the total quantity of gasoline manufactured in the six states in the Western area;

(g) As of December 31, 1950, the volume of gasoline sold at the L. O. stations constituted 4.90% of the total volume of gasoline sold by all companies to all service stations in the Western area;

(h) As of December 31, 1950, the volume of gasoline sold at the L. O. stations constituted 3.18% of the volume of taxable sales of motor vehicle fuel by all companies in the Western area;

(i) As of December 31, 1948, the number of Richfield L. O. stations constituted 3.28% of all service stations in the Western area;

[fol. 496] (j) During the year 1947 Richfield's sales of

lubricating oil to service stations of all types in the Western area constituted 2.39% of the total volume of lubricating oil sold by all companies in that area;

(k) During the year 1947 the volume of tires sold to L. O., 337 and 3-C stations by Richfield and by Richfield's TBA distributors constituted 1.02% of the total tires sold in the Western area;

(l) During the year 1947 the volume of batteries sold to L. O., 337 and 3-C stations by Richfield and by Richfield's TBA distributors constituted 1.27% of the total batteries sold in the Western area.

(9) The District Court erred in failing to conclude and determine from the facts set forth in Assignments of Error 5, 6 and 8 hereinabove that even if the L. O. stations were validly determined to be a legitimate market for Richfield's competitors, and if the relationship between Richfield and the L. O. operators was not such as to exempt and exclude the same from the scope and effect of § 1 of the Sherman Act and § 3 of the Clayton Act, nevertheless restraints imposed by Richfield upon the petroleum products and automotive accessories handled by the L. O. operators in Richfield's L. O. stations are not unreasonable restraints of trade under § 1 of the Sherman Act and do not substantially lessen competition or tend to create a monopoly in any line of commerce under § 3 of the Clayton Act.

(10) The District Court erred in failing to conclude and determine from the facts set forth in Assignments of Error 5, 6 and 8 hereinabove that even if the L. O. stations were validly determined to be a legitimate market for Richfield's competitors, and if the relationship between Richfield and the L. O. operators was not such as to exempt and exclude the same from the scope and effect of § 3 of the Clayton Act, nevertheless the business of said L. O. sta- [fol. 497] tions is not a substantial share of the line of commerce affected.

(11) The District Court erred in its Final Judgment in:

(a) adjudging Richfield's contracts, agreements and understandings with its L. O. operators to be in violation of § 1 of the Sherman Act and § 3 of the Clayton Act;

(b) enjoining Richfield from entering into any contract, agreement or understanding with any L. O. operator which has the purpose or effect of requiring the L. O. operator to secure all of his requirements of petroleum products or automotive accessories from or through Richfield;

(c) enjoining Richfield from exercising the 24-hour termination clause in any lease pertaining to an L. O. station or cancelling any such lease on less than thirty (30) days' written notice to any L. O. operator; and

(d) enjoining Richfield from cencelling any L. O. lease excepting only for a breach of any of the written covenants contained in any written L. O. lease.

(12) The District Court erred in its Order made and entered on August 17, 1951, denying Richfield's Motion under Rule 52 of the Federal Rules of Civil Procedure, and particularly the following portion thereof:

"4. Richfield moves to amend the Final Judgment by the inclusion as a provision thereof of the following paragraph which was included and embodied in the Final Judgment by this Court in *United States* v. *Standard Oil Company of California*, No. 6159-Y, filed June 30, 1948, (78 Fed. Supp. 850, affirmed 337 U. S. 293, 93 L. Ed. 1371), to wit:

[fol. 498] 'IX

Nothing contained in this judgment shall enjoin or restrain defendant from selling or contracting to sell petroleum products and/or automotive accessories including such products as are sponsored by defendant, to independent dealers on the condition that any pump or tank or other container or receptacle for such products, furnished by defendant and marked as such to an independent dealer, shall be used solely for the storing, handling or dispensing of defendant's petroleum products and to prescribe by agreement or regulations not inconsistent with the provisions of this decree, for the storage, handling, or dispensing of such products.'

Said motion is made upon the ground that throughout the trial of the above entitled cause, plaintiff has asserted, and in the Opinion in this cause filed July 2, 1951, this Court

has determined, that the agreements involved in this case 'are of the type condemned by the decision' in *United States v. Standard Oil Company of California* (supra). If such contention and determination be warranted or true, the Final Judgment in this cause should not be more onerous than the judgment of the same Court against Standard Oil Company of California; and the Final Judgment in this cause should not enjoin Richfield from engaging in any of the important competitive marketing practices which Richfield's largest competitor, Standard Oil Company of California, is expressly permitted to engage in by the provision in the judgment in the Standard Oil case referred to above."

[fol. 499] II

Assignment of Errors Relating to Dealer Stations (i.e., the 337 and 3-C Stations)*

(1) The District Court erred in making the following Findings of Fact concerning the Dealer stations, which Findings are clearly erroneous in view of the entire evidence in the record:

(a) Findings 5, 20, 21, 26, 27, 28, 30, 33, 34, 39, 43, 45, 46, 47 and 48 in so far as the same determine the existence of any oral contract, agreement or understanding between Richfield and any one or more of the 337 type of service sta-

* The Dealer stations, both 337 and 3-C, when treated as a class, are distinguishable from the L. O. stations in that Richfield acknowledges that the former are owned and operated by independent businessmen and are the subject matter of competition. Although the 337 and 3-C stations are treated collectively in these Assignments of Error for the purpose of distinguishing them from the L. O. stations, nevertheless Richfield's contracts pertaining to the 337 stations differ substantially from those pertaining to the 3-C stations with the results both that evidence as to each of such types of station must be weighed separately and independently and that Findings pertaining to Richfield's contracts with either of such types of station may not be supported by evidence relating to Richfield's contracts with the other type.

tion dealers who operate any of the 1,361 stations of that type, or between Richfield and any one or more of the 3-C type of service station dealers who operate any of the 261 stations of that type.

(b) Finding 5 in so far as the same determines that a written Sales Contract and a written Painting Agreement are made with each 337 service station dealer;

[fol. 500] (c) Findings 13, 19 and 24 in so far as the same determine that the practical or intended purpose or effect of the fixed quantity or minimum-maximum provision of the written Sales Contracts therein described were to require the 337 service station dealer or the 3-C service station dealer to secure his entire requirements of petroleum products from Richfield;

(d) Finding 25 in so far as the same determines that the provisions of the Painting Agreement gave Richfield the right to control the placing or removal of advertising signs, trade marks or other insignia on the premises of the 337 dealer;

(e) Finding 26 in so far as the same determines that the intended effect of the Painting Agreement is to secure an exclusive Richfield outlet; that the obligation of the 337 dealer under any written Painting Agreement was intended to or had the effect of compelling the dealer to purchase all of his requirements of petroleum products or automotive accessories from or through Richfield; and that the Painting Agreement had the intended effect of shutting out all competition for the business of the 337 dealer;

(f) Finding 28 in so far as the same determines that any of the matters therein described have affected or have been applicable to any 337 or 3-C dealer station at any time within the period of ten years prior to the time of trial;

(g) Finding 29 in so far as the same determines that Richfield inspects, polices or supervises the activity or sales of any 337 or 3-C dealer;

(h) Finding 39 in so far as the same determines that Richfield's contracts or agreements with 337 or 3-C dealers [fol. 501] prevent such dealers from dealing with competitive suppliers or directly affect the shipment of competitive goods originating in interstate sources;

(i) Finding 45 in so far as the same determines that

manufacturers or producers of petroleum products or automotive accessories have unsuccessfully attempted to sell their products to the 337 or 3-C dealers;

(j) Finding 46, in so far as the same determines that manufacturers, producers, distributors and sellers of products competitive to those sold or distributed by Richfield have been unable to sell their products to the 337 or 3-C dealers or to increase their sales or compete for the market represented by either the 337 dealers or the 3-C dealers; and that the agreements and understandings between Richfield and the 337 and 3-C dealers have denied access by such competitors to such service stations;

(k) Finding 47 in so far as the same determines that the intended purpose or effect of any of the agreements or understandings has been to prevent the 337 or 3-C dealers from handling any petroleum products or automotive accessories other than those manufactured, sold, supplied or sponsored by Richfield; that 337 and 3-C dealers did not openly handle competitive products nor display signs advertising the same; that the 337 and 3-C dealers have been denied access to competitive products and have been prevented from purchasing petroleum products or automotive accessories in an open and competitive market; and that the agreements and understandings were intended to and in practice do confine the 337 and 3-C dealers to the petroleum products and automotive accessories handled or sponsored by Richfield;

(l) Finding 48 in so far as the same determines that the [fol. 502] agreements between Richfield and the 337 and 3-C dealers have denied the dealers the right to buy competitive products and have denied manufacturers of competitive products the right to sell to such 337 and 3-C dealers.

(2) The District Court erred in determining the following Conclusions of Law with respect to the Dealer stations:

(a) Conclusions 1 to 4, inclusive, and 6 to 11, inclusive, in so far as said Conclusions are based upon a determination of the existence of any oral contracts, agreements or understandings between Richfield and any one or more of the 337 type of service station dealers who operate any of the 1,361 stations of that type, or between Richfield and any one or

more of the 3-C type of service station dealers who operate any of the 261 stations of that type;

(b) Conclusion 2 in so far as the same determines that the contracts, agreements or understandings between Richfield and the 337 dealers and between Richfield and the 3-C dealers unreasonably restrain the course of interstate commerce in petroleum products or automotive accessories in violation of § 1 of the Sherman Act;

(c) Conclusion 3 in so far as the same determines that the contracts, agreements or understandings between Richfield and the 337 dealers and between Richfield and the 3-C dealers substantially lessen competition or tend to create a monopoly in the sale or distribution of petroleum products or automotive accessories in violation of § 3 of the Clayton Act;

(d) Conclusion 6 in so far as the same determines that the contracts, agreements or understandings between Richfield and the 337 dealers and between Richfield and the 3-C dealers had the necessary or intended effect of foreclosing [fol. 503] competition in the sale of petroleum products or automotive accessories from a substantial market for such products in the six states of the Western area;

(e) Conclusion 7 in so far as the same determines that the contracts, agreements or understandings between Richfield and the 337 dealers and between Richfield and the 3-C dealers unreasonably restrain or substantially lessen competition in an appreciable segment of interstate commerce;

(f) Conclusion 8 in so far as the same determines that the contracts, agreements or understandings between Richfield and the 337 dealers and between Richfield and the 3-C dealers have the necessary or intended effect of denying the 337 or 3-C dealers access to products competitive to those manufactured, handled or sponsored by Richfield or of locking out such dealers from the sources of such products originating in interstate commerce, or have the effect of confining the 337 or 3-C dealers to the handling of or dealing in petroleum products or automotive accessories manufactured, handled or sponsored by Richfield;

(g) Conclusion 9 in so far as the same determines that the contracts, agreements or understandings between Richfield and the 337 dealers and between Richfield and the 3-C

dealers have the necessary or intended effect of denying manufacturers or suppliers of petroleum products or automotive accessories competitive to those manufactured or sponsored by Richfield access to a substantial number of potential outlets for the sale of their products;

(h) Conclusion 10 in so far as the same determines that the number of outlets and the volume of business in petroleum products and automotive accessories foreclosed to competition by the contracts or agreements between Rich- [fol. 504] field and the 337 dealers and between Richfield and the 3-C dealers is substantial, whether considered comparatively or not;

(i) Conclusion 11 in so far as the same determines that the provisions of the contracts or agreements between Richfield and the 337 dealers and between Richfield and the 3-C dealers are illegal in their effect or that the plaintiff is entitled to an injunction with regard thereto.

(3) The District Court erred in failing to make the following Findings of material facts with respect to the Dealer stations, each of which Findings is supported by the uncontradicted evidence and is material to the issues raised by the pleadings:

(a) The Sales Contracts between Richfield and the 337 dealers and between Richfield and the 3-C dealers (excepting only those four Sales Contracts with the 3-C dealers which contain a "requirements" provision) do not obligate or require any 337 or 3-C dealer to purchase all of his requirements of petroleum products from Richfield and do not prevent or preclude any such dealers from purchasing additional quantities of the same products from any and all competitors of Richfield. The quantities which the 337 and 3-C dealers agreed in their respective Sales Contracts to purchase from Richfield were substantially less than the dealers' anticipated requirements of petroleum products as of the dates when the dealers signed their respective Sales Contracts.

Richfield had in effect as of February 28, 1951, a total of 1,640 Sales Contracts with 337 and 3-C dealers and the following Table segregates said contracts into four groups on

the basis of the ratio which the quantity of gasoline that the dealer obligated himself to purchase under his Sales Contract bears to such dealer's average monthly purchases for [fol. 505] the year preceding the date of the contracts. Column (1) specifies the ratio, column (2) specifies the number of contracts falling into each ratio group and column (3) specifies the percentage of total contracts in each ratio group.

(1) Contract Groups	(2) Number of Sales Contracts	(3) Percent Each Group Bears to Total Number of Sales Contracts
Group A—less than 75%	408	25%
Group B—75% to 79%, incl.	458	28%
Group C—80% to 89%, incl.	560	34%
Group D—90% and over	214	13%

(b) Richfield has not executed a Painting Agreement with each 337 dealer. In a large percentage of instances no Painting Agreement was entered into with the 337 dealer with whom a Sales Contract was made. (See column (1) below). In a large percentage of other instances a Sales Contract was made with the 337 dealer without any accompanying Painting Agreement, and subsequently a Painting Agreement was entered into at the time the dealer requested that his station be painted. (See column (3) below). Column (2) below represents the number of Sales Contracts which were accompanied by Painting Agreements made at the same time as the respective Sales Contracts.

[fol. 506]

December 31st of	(1)	(2)	(3)
1938	109	349	98
1939	119	380	107
1940	121	385	109
1941	139	444	125
1942	93	298	84
1943	119	379	107
1944	123	394	112
1945	173	552	156
1946	205	656	185
1947	208	665	188
1948	223	712	201
1949	236	755	213
1950	267	853	241

(c) During the period from January 1, 1946 to December 31, 1950, Richfield lost the business of 514 dealers who were purchasing petroleum products from Richfield under the

provisions of Form 337 Sales Contracts. The following tabulation shows the number of such accounts lost at the expiration of the Sales Contracts and the number lost prior to the expiration of the Sales Contracts; and said tabulation also shows the number of accounts lost in each class which had Painting Agreements in existence and the number which had no such Painting Agreements in Existence.

Number Lost at Expiration of Contract			Number Lost Prior to Expiration of Contract			Total Number Lost		
Painting Agreement in Existence at Time of Loss			Painting Agreement in Existence at Time of Loss			Painting Agreement in Existence at Time of Loss		
Yes	No	Total	Yes	No	Total	Yes	No	Total
81	26	107	303	104	407	384	130	514

[fol. 507] (d) Not less than 75% of all of the 337 and 3-C dealers handle, openly advertise and display, and sell non-Richfield petroleum products and non-approved automotive accessories;

(e) The effect of Richfield's contracts with the 337 dealers or with the 3-C dealers has not been to restrict unreasonably the opportunity of Richfield's competitors to market their products;

(f) The public interest has not been harmed or adversely affected by Richfield's contracts with the 337 dealers or with the 3-C dealers;

(g) The 337 Sales Contract is not unreasonable in duration, being terminable by either party thereto on thirty days' written notice;

(h) Richfield does not have a position of dominating power in the petroleum products industry nor in the automotive accessories industry in the Western area;

(i) As of December 31, 1950, the volume of gasoline sold by Richfield to the 337 dealers constituted 1.14% of the total quantity of gasoline manufactured in the six states in the Western area;

(j) As of December 31, 1950, the volume of gasoline sold by Richfield to the 337 stations constituted 2.03% of the total volume of gasoline sold by all companies to all service stations in the Western area;

(k) As of December 31, 1950, the volume of gasoline sold by Richfield to the 337 stations constituted 1.33% of the

volume of taxable sales of motor vehicle fuel by all companies in the Western area;

(l) As of December 31, 1948, the number of 337 stations constituted 3.08% of all service stations of all companies in the Western area;

[fol. 508] (m) As of December 31, 1950, the volume of gasoline sold at the 3-C stations constituted .34% of the total quantity of gasoline manufactured in the six states in the Western area;

(n) As of December 31, 1950, the volume of gasoline sold by Richfield to the 3-C stations constituted .63% of the total volume of gasoline sold by all companies to all service stations in the Western area;

(o) As of December 31, 1950, the volume of gasoline sold by Richfield to 3-C stations constituted .40% of the volume of taxable sales of motor vehicle fuel by all companies in the Western area;

(p) As of December 31, 1948, the number of 3-C stations constituted .70% of all service stations of all companies in the Western area.

(4) The District Court erred in failing to conclude and determine from the facts set forth in Assignment of Error 3 hereinabove that the contracts, agreements and understandings between Richfield and the 337 and 3-C dealers are not unreasonable restraints of trade under §1 of the Sherman Act, and do not substantially lessen competition or tend to create a monopoly in any line of commerce under §3 of the Clayton Act.

(5) The District Court erred in failing to conclude and determine from the facts set forth in Assignment of Error 3 hereinabove that the business of the 337 stations or the 3-C stations is not a substantial share of the line of commerce affected.

(6) The District Court erred in the Final Judgment in determining:

(a) that Richfield has entered into any oral contracts, agreements or understandings with any one or more of the 337 type of service station dealers who operate any one of the 1,361 stations of that type, or with any one or more of the [fol. 509] 3-C type of service station dealers who operate any of the 261 stations of that type;

(b) that Richfield's contracts, agreements and understandings with the 337 dealers violate §1 of the Sherman Act and §3 of the Clayton Act;

(c) that Richfield's contracts, agreements and understandings with the 3-C dealers violate §1 of the Sherman Act and §3 of the Clayton Act.

Prayer for Reversal

For which Errors defendant and appellant, Richfield Oil Corporation, prays that the Final Judgment of the District Court made and entered on August 2, 1951, in the above entitled action be reversed and a judgment be rendered in favor of the said defendant and appellant.

Dated: September 4, 1951.

William J. DeMartini, Robert E. Paradise, Attorneys for Defendant and Appellant.

Krystal and Paradise, of Counsel.

[fols. 510-511] Statement Calling Attention to the Provisions of Supreme Court Rule 12(3) (omitted in printing).

[fol. 512] [File endorsement omitted]

In United States District Court

[Title omitted]

Order Allowing Appeal—Filed September 4, 1951

Richfield Oil Corporation, the defendant in the above cause, having made and filed its petition for the allowance of an appeal to the Supreme Court of the United States, from the final judgment made and entered in said cause by the District Court of the United States, for the Southern District of California, on the 2nd day of August, 1951, and having also made and filed its assignment of errors, prayer for reversal and statement as to jurisdiction pursuant to statutes and to the rules of the Supreme Court of the United States in such cases made and provided,

It is now ordered that an appeal be and the same is hereby allowed in the above cause, as provided by law, from the

District Court of the United States for the Southern Dis-
[fol. 513] trict of California, to the Supreme Court of the United States; and

It is further ordered that a citation shall issue as provided by law; that defendant shall give a bond on appeal for costs in the sum of $1000.00, and that a transcript of the records, proceedings and documents upon which final judgment herein was based, duly authenticated, shall be sent to the Supreme Court of the United States under and pursuant to the rules of said Court in such cases made and provided.

Dated: Sept. 4, 1951.

Ben Harrison, United States District Judge.

[fols. 514-517] PRAECIPE INDICATING THE PORTIONS OF THE RECORD TO BE INCORPORATED IN THE TRANSCRIPT ON APPEAL (Omitted in printing)

[fol. 518] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION DESIGNATING PORTIONS OF THE RECORD TO BE INCLUDED IN THE TRANSCRIPT ON APPEAL (PURSUANT TO SUPREME COURT RULE 10)—Filed September 4, 1951

Pursuant to Rule 10 of the Revised Rules of the Supreme Court of the United States, as amended, counsel for plaintiff and defendant, by this written stipulation filed with the Clerk of the above entitled Court, stipulate that the following portions of the record shall be included in the transcript, and request said Clerk to prepare and transmit all of the same as the record in the above entitled cause upon defendant's appeal to the Supreme Court of the United States:

[fol. 519] 1. Complaint, dated April 30, 1947.

2. Answer to Complaint, dated November 2, 1948.

3. Stipulation dated June 23, 1950, for Amendment to Answer, and Order thereon dated June 26, 1950.

4. Amendment to Answer to Complaint, dated June 26, 1950.

5. Request for Admission Under Rule 36, dated October 13, 1950, including attachments.

6. Opinion of the Court, dated July 2, 1951.

7. Decision and Order of the Court, dated July 2, 1951.

8. Objection of Defendant to Findings of Fact, Conclusions of Law and Final Judgment proposed by Plaintiff, lodged on July 27, 1951 and filed on August 2, 1951, together with the notation thereon made by the Court.

9. Findings of Fact and Conclusions of Law, dated August 2, 1951.

10. Final Judgment, dated August 2, 1951.

11. Notice of and Motion for Amendment to Findings of Fact, Conclusions of Law and Final Judgment, dated August 17, 1951.

12. Order Denying Motion for Amendment to Findings of Fact, Conclusions of Law and Final Judgment, dated August 17, 1951.

13. Petition for Appeal, dated September 4, 1951.

14. Citation, dated September 4, 1951.

15. Statement as to Jurisdiction, dated September 4, 1951 (omitting therefrom copy of the Opinion of July 2, 1951, but showing by an appropriate note appended thereto that said copy was annexed to the original).

16. Statement Calling Attention to the Provisions of Supreme Court Rule 12(3), dated September 4, 1951.

17. Order Allowing Appeal, dated September 4, 1951.

[fol. 520] 18. Assignment of Errors and Prayer for Reversal dated September 4, 1951.

19. Proof of Service, dated September 4, 1951.

20. Bond on Appeal, dated September 4, 1951.

21. Stipulation Designating Portions of the Record to be included in the Transcript on Appeal (Pursuant to Supreme Court Rule 10), dated September 4, 1951.

22. Praecipe Indicating the Portions of the Record to be Incorporated in the Transcript on Appeal, dated September 4, 1951.

23. The Reporter's Transcript of Proceedings at the

Trial of the above entitled cause, being a record of the proceedings before the above entitled Court on May 8, 9, 10, 11, 15, 16, 17, 18, 22, 23, 24, 25, 29, 31, June 5, 6, and August 1, 1951.

24. The following exhibits received in evidence at the trial:

Plaintiff's Exhibits

1 to 1-G, inclusive, 2 to 3-D, inclusive, 4 to 4-D, inclusive, 5 to 5-I, inclusive, 6 to 6-F, inclusive, 7 (white copy only) to 9-A, inclusive, 10 to 10-E, inclusive, 11 to 13, inclusive, 16, 17-D, 17-E, 18-D, 18-E, 20-A, 21 to 21-B, inclusive, 22-G, 23-A, 25, 26-A, 27 to 28-A, inclusive, 29 and 30, (being all exhibits offered by plaintiff which were received in evidence except those exhibits which are referred to in Section I of the Condensed Statement annexed hereto).

Defendant's Exhibits

The following portion of Exhibit A: pages 1 to 7, inclusive, and the following forms attached thereto: Dealer Franchise Application, Application for Prospective Sub-[fol. 521] lessees, Application for Service Station Sub-Lease, Dealer Application, Application for Employment and Form 901, Application for Employment, (and specifically excluding the remaining portion of said Exhibit A), C to G, inclusive, H-3, J to L, inclusive, M-1 to M-13, inclusive, N to N-4, inclusive, O, O-1, P, Q to Z, inclusive, AA to AD, inclusive, AF and AG, (being all exhibits offered by defendants which were received in evidence, except those exhibits and the portions of Exhibit A which are referred to in Section II of the Condensed Statement annexed hereto.)

It is further stipulated that the exhibits referred to in paragraph 24 above were all of the exhibits received in evidence by the above entitled Court upon the trial of this cause, with the exception of certain exhibits offered by plaintiff and defendant and received in evidence upon said trial, which are referred to in the Condensed Statement annexed hereto; that said Condensed Statement adequately states for all purposes the contents of the exhibits last referred to; and that said Condensed Statement and this

Stipulation with reference thereto are made for the purpose of avoiding unnecessary repetition and omitting irrelevant matter.

It is further stipulated that said Reporter's Transcript of Proceedings at the trial, referred to in paragraph 23 herein, and the exhibits referred to in paragraph 24 herein, and the Condensed Statement annexed hereto, comprise a complete record of all proceedings taken and all evidence [fol. 522] received upon the trial of the above entitled cause.

Dated: September 4, 1951.

William C. Dixon, Special Assistant to the Attorney General, Theodore M. Alexander, T. Keister Greer, Theron M. Hall, Lawrence M. Somerville, Special Attorneys, Anti-Trust Division, Department of Justice, Attorneys for Plaintiff, By William C. Dixon.

William J. DeMartini, Robert E. Paradise, Attorneys for Defendant.

Krystal & Paradise, of Counsel.

[fol. 523] CONDENSED STATEMENT WITH RESPECT TO CERTAIN EXHIBITS OFFERED BY PLAINTIFF AND BY DEFENDANT AND RECEIVED IN EVIDENCE

[fol. 524] Section I—Plaintiff's Exhibits

All references in this Section are to plaintiff's exhibits.

Exhibit 14. This exhibit comprises the following:

Printed form 362, Service Station Lease 3-C, print of 11-46, which is plaintiff's *Exhibit 4*, with the exception that this instrument is executed on June 24, 1948, by and between William Strable and Angeline Strable, his wife, as Lessors, and Richfield Oil Corporation, as Lessee, for the period from June 1, 1948 to May 31, 1958, with the agreement and understanding that Lessee shall be privileged to terminate this lease as of the 31st day of May, 1953, by means of a prior 30 day notice in writing to Lessor. This

lease covers property on Highway 91 in the City of Arden, County of Clark, State of Nevada. The agreed rental is ½¢ per gallon for each gallon of gasoline, irrespective grade, delivered to the premises described in the lease by Lessee with a minimum rental of $10.00 per month.

Exhibit 14-A. This exhibit comprises the following:

Printed form 668, Operator's Lease 3-C, print date of 6-46, which is like plaintiff's *Exhibit 4-A*, except that it is an instrument executed on June 24, 1948, by and between Richfield Oil Corporation, as Lessor, and William Strable, as Lessee, covering premises on Highway 91 in the City of Arden, County of Clark, State of Nevada, for the term commencing on June 1, 1948 and ending on May 30, 1958, unless the lease shall be sooner terminated in the manner provided therein. The lease contains provision for a rental of ½¢ per gallon of gasoline delivered to the premises with [fol. 525] a minimum of $10.00 per month.

Exhibit 14-B. This exhibit comprises the following:

Printed form 783, Operator's Sales Contract 3-C, print date of 12-47, which is like plaintiff's *Exhibit 4-B*, except that it is an instrument executed on June 24, 1948, by and between Richfield Oil Corporation, as Seller, and William Strable, as Buyer, for the period commencing June 1, 1948 and ending May 30, 1958. The quantity provision of the printed form is as follows:

	Minimum
Gasolines	5,500 gallons
Lubricating oils	55 gallons
Greases	.... pounds

The contract also includes the following inserted paragraph:

> "In the event of any termination of that certain Operator's Lease executed concurrently herewith by and between the parties hereto, this Operator's Sales Contract shall automatically terminate without notice or action on the part of either party hereto."

Exhibit 14-C. This exhibit comprises the following:

Printed form 668, Operator's Lease 3-C, print date of 9-48, which is plaintiff's *Exhibit 4-D,* except that it is an instrument executed on October 15, 1948, by and between Richfield Oil Corporation, as Lessor, and William Strable, as Lessee, for the period commencing November 1, 1948, and ending May 30, 1958, unless it be sooner terminated in the manner provided for therein. The lease contains provision for a rental of ½¢ per gallon of gasoline delivered to the premises with a minimum of $10.00 per month.

[fol. 526] *Exhibit 14-D.* This exhibit comprises the following:

Printed form 783, Operator's Sales Contract 3-C, print date of 8-48, which is plaintiff's *Exhibit 4-C,* except that it is an instrument executed on October 15, 1948, by and between Richfield Oil Corporation, as Seller, and William Strable, as Buyer, designating Buyer's service station located on Highway 91 and Arden Road, City of Arden, State of Nevada. The quantity provision of the printed form is as follows:

	Minimum	Maximum
Gasolines	4,609 gallons	5,761 gallons
Lubricating oils	46 gallons	58 gallons
Greases	.... pounds	.... pounds

The contract also contains the following inserted paragraph:

> "In the event of any termination of that certain Operator's Lease executed concurrently herewith by and between the parties hereto, this Operator's Sales Contract shall automatically terminate without notice or action on the part of either party hereto."

Exhibit 15. This exhibit comprises the following:

Printed form 542, Service Station Lease, print date of 11-44, which is like plaintiff's *Exhibit 1-G,* except that this instrument is executed on July 20, 1945, by and between Richfield Oil Corporation, as Lessor, and J. W. Hurst, as Lessee, covering service station located at 1237 SE Haw-

thorne Blvd., Portland, Oregon. The period of the lease commences on July 20, 1945. The lease provides for rental equal to $55.00 per month, plus 1¢ per gallon for each gallon of gasoline delivered to the premises in excess of 5,500 gallons in each calendar month. Paragraph 11 of the [fol. 527] lease makes reference to the fact that it is understood that the instrument is subordinate and subject to all terms, provisions and conditions contained in a certain lease dated March 23, 1936, by and between The United States National Bank of Portland, Oregon, as Lessor, and William C. McDuffie, as Receiver for Richfield Oil Company of California, as Lessee.

Exhibit 15-A. This exhibit comprises the following:

Printed form 542, Service Station Lease, print date of 11-44, which is like plaintiff's *Exhibit 1-G*, except that this instrument is executed on March 24, 1946, by and between Richfield Oil Corporation, as Lessor, and J. W. Hurst, as Lessee, covering service station property located at 1237 SE Hawthorne Blvd., Portland, Oregon. The period of the lease commences on March 24, 1946. The lease provides for rental equal to $55.00 per month plus 1¢ per gallon for each gallon of gasoline delivered to the premises in excess of 5,500 gallons in each calendar month. Paragraph 11 of the lease makes reference to the fact that it is understood that the instrument is subordinate and subject to all terms provisions and conditions contained in that certain lease dated March 27, 1946, by and between The United States National Bank of Portland, Oregon, as Lessor, and Richfield Oil Corporation, as Lessee, and from which paragraph the following words have been stricken "(to whose interest Lessor herein has succeeded)".

Exhibit 17. This Exhibit comprises the following:

Printed form 783, Operator's Sales Contract 3-C, print date of 1-46, which is like plaintiff's *Exhibit 4-B*, except that this instrument is executed on August 2, 1946, by and between Richfield Oil Corporation, as Seller, and D. W. [fol. 528] Colmery and Helene P. Colmery, husband and wife, as Buyers, for a period of twenty years, less one day. The quantity provision of the printed form is as follows:

	Minimum
Gasolines	5,000 gallons
Lubricating oils	50 gallons
Greases	50 pounds

The contract contains reference to Buyer's service station at Las Tunas Drive and Live Oak Avenue, Arcadia, California, (known as the "Kalliwoda" station) and also contains the following inserted paragraph:

> "The term of this Sales Contract shall commence upon the date of commencement of the term of that certain Operator's Lease executed concurrently herewith by and between the parties hereto and shall end upon the date of expiration or date of any other termination of said lease."

Exhibit 17-A. This exhibit comprises the following:

Printed form 668, Operator's Lease 3-C, print date of 11-45, which is plaintiff's *Exhibit 4-A*, except that this instrument is executed on August 2, 1946, by and between Richfield Oil Corporation, as Lessor, and D. W. Colmery and Helene P. Colmery, husband and wife, as Lessees, for a period of twenty years, less one day.

This lease relates to the Kalliwoda station at Las Tunas Drive and Live Oaks Avenue, Arcadia, California.

Exhibit 17-B. This exhibit comprises the following:

Printed form 783, Operator's Sales Contract 3-C, print date of 8-48, which is plaintiff's *Exhibit 4-C*, except that this instrument is executed on March 28, 1951, by and between Richfield Oil Corporation, as Seller, and D. W. [fol. 529] Colmery and Helene P. Colmery, husband and wife, as Buyers, and covering the period commencing March 1, 1951 to and including December 30, 1967. The quantity provision of the printed form is as follows:

	Minimum	Maximum
Gasolines	14,500 gallons	25,000 gallons
Lubricating oils	75 gallons	225 gallons
Greases	60 pounds	225 pounds

This contract relates to the Kalliwoda station and contains the following inserted paragraph:

> "In the event of any termination of that certain Operator's Lease executed concurrently herewith by and between the parties hereto, this Operator's Sales Contract shall automatically terminate without notice or action on the part of either party hereto."

Exhibit 17-C. This exhibit comprises the following:

Printed form 668, Operator's Lease 3-C, print date of 9-48, which is plaintiff's *Exhibit 4-D*, except that this instrument is executed on March 28, 1951, by and between Richfield Oil Corporation, as Lessor, and D. W. Colmery and Helene P. Colmery, husband and wife, as Lessees, for the term commencing March 1, 1951, to and including December 30, 1967. The lease also contains the following inserted paragraph:

> "Lessee shall be privileged to terminate this lease at any time during the term hereof by means of a prior 30 day notice in writing to Lessor."

This lease relates to the Kalliwoda station.

Exhibit 18. Printed form 783, Operator's Sales Contract 3-C, print date of 1-46, which is like plaintiff's *Exhibit* [fol. 530] *4-B*, except that this instrument is executed on December 11, 1946, by and between Richfield Oil Corporation, as Seller, and D. W. Colmery and Helene P. Colmery, husband and wife, as Buyers, for a term of fifteen years, less one day. The quantity provision of the printed form is as follows:

	Minimum
Gasolines	5,000 gallons
Lubricating oils	50 gallons
Greases	50 pounds

The contract contains reference to Buyers' service station at Las Tunas Drive and Baldwin Avenue, Arcadia, California, (known as the "Land Escrow" station), and also contains the following inserted paragraph:

> "In the event of any termination of that certain Operator's Lease executed concurrently herewith by

and between the parties hereto, this Operator's Sales Contract shall automatically terminate without notice or action on the part of either party hereto."

Exhibit 18-A. This exhibit comprises the following:

Printed form 668, Operator's Lease 3-C, print date of 11-45, which is plaintiff's *Exhibit 4-A*, except that this instrument is executed on December 11, 1946, by and between Richfield Oil Corporation, as Lessor, and D. W. Colmery and Helene P. Colmery, husband and wife, as Lessees, for a period of fifteen years, less one day. This lease relates to the Land Escrow station.

Exhibit 18-B. This exhibit comprises the following:

Printed form 783, Operator's Sales Contract 3-C, print date of 8-48, which is plaintiff's *Exhibit 4-C*, except that this instrument is executed on March 28, 1951, by and be-
[fol. 531] tween Richfield Oil Corporation, as Seller, and D. W. Colmery and Helene P. Colmery, husband and wife, as Buyers, for the period commencing March 1, 1951, and ending August 30, 1962. The quantity provision of the printed form is as follows:

	Minimum	Maximum
Gasolines	11,500 gallons	20,000 gallons
Lubricating oils	65 gallons	200 gallons
Greases	50 pounds	200 pounds

This contract relates to the Land Escrow station and contains the following inserted paragraph:

"In the event of any termination of that certain Operator's Lease executed concurrently herewith by and between the parties hereto, this Operator's Sales Contract shall automatically terminate without notice or action on the part of either party hereto."

Exhibit 18-C. This exhibit comprises the following:

Printed form 668, Operator's Lease 3-C, print date of 9-48, which is plaintiff's *Exhibit 4-D*, except that this instrument is executed on March 28, 1951, by and between

Richfield Oil Corporation, as Lessor, and D. W. Colmery and Helene P. Colmery, husband and wife, as Lessees, for the period commencing on March 1, 1951, and ending on August 30, 1962. The lease contains the following inserted paragraph:

> "Lessee shall be privileged to terminate this lease at any time during the term hereof by means of a prior 30 day notice in writing to Lessor."

This lease relates to the Land Escrow station.

Exhibit 19. This exhibit comprises the following:

[fol. 532] Printed form 337, Sales Contract, print date of 6-40, which is like plaintiff's *Exhibit 5-B*, except that this instrument is executed on December 2, 1941, by and between Richfield Oil Corporation, as Seller, and Gordon McRae, as Buyer, for the period commencing on January 4, 1942, and extending to and including January 3, 1944. The quantity provision of the printed form is as follows:

	Minimum	Maximum
Gasolines	90,000 gallons	125,000 gallons
Lubricating oils	2,000 gallons	3,000 gallons
Greases	2,000 pounds	3,000 pounds

Reference is made to Buyer's service station located at Main and Marine Streets, Ocean Park, California.

Exhibit 19-A. This exhibit comprises the following:

Printed form 59, Painting Agreement, print date of 4-41, which is like plaintiff's *Exhibit 5-C*, except that this instrument is executed on December 2, 1941, by and between Richfield Oil Corporation and Gordon McRae, as Dealer. The agreement makes reference to Sales Contract dated December 2, 1941, entered into between Richfield Oil Corporation, as Seller, and Gordon McRae, as Buyer, such contract being that identified as plaintiff's *Exhibit 19*. Said Painting Agreement also provides in paragraph numbered 2 thereof a minimum of $270.00 and a maximum of $275.00 to be expended as the cost for the necessary work, labor

and materials to paint the station identified in the agreement and located at Main and Marine Streets, Ocean Park, California.

Exhibit 22. This exhibit comprises the following:

Printed form 668, Operator's Lease 3-C, print date of 11-45, which is plaintiff's Exhibit 4-A, except that this instrument is executed on June 18, 1946, by and between [fol. 533] Richfield Oil Corporation, as Lessor, and Raymand R. Mathis, as Lessee, for the period commencing July 1, 1946, and ending June 29, 1956, unless the lease shall be sooner terminated in a manner therein provided. The lease covers service station property located in the City of Reedville, County of Washington, State of Oregon.

Exhibit 22-A. This exhibit comprises the following:

Printed form 783, Operator's Sales Contract 3-C, print date of 1-46, which is like plaintiff's *Exhibit 4-B*, except that this instrument is executed on June 18, 1946, by and between Richfield Oil Corporation, as Seller, and Raymond R. Mathis, as Buyer, for the period commencing July 1, 1946, and ending June 29, 1956. The quantity provision of the printed form is as follows:

	Minimum
Gasolines	4,500 gallons
Lubricating oils	90 gallons
Greases	350 pounds

The contract makes reference to Buyer's service station at Reedville, Oregon, and contains the following inserted paragraph:

> "In the event of any termination of that certain Operator's Lease executed concurrently herewith by and between the parties hereto this Operator's Sales Contract shall automatically terminate without notice or action on the part of either party hereto."

Exhibit 22-B. This exhibit comprises the following:

Printed form 362, Service Station Lease 3-C, print date of 1-46, which is like plaintiff's *Exhibit 4*, except that this

instrument is executed on June 18, 1946, by and between Raymond R. Mathis and Winnefred I. Mathis, his wife, as [fol. 534] Lessors, and Richfield Oil Corporation, as Lessee, for the period commencing July 1, 1946, and ending June 30, 1956.

Exhibit 22-C. This exhibit comprises the following:

Printed form 668, Operator's Lease 3-C, print date of 9-48, which is plaintiff's *Exhibit 4-D*, except that this instrument is executed on October 21, 1948, by and between Richfield Oil Corporation, as Lessor, and Raymond R. Mathis, as Lessee, for the period commencing November 1, 1948, to and including June 29, 1956, unless the lease be sooner terminated in the manner therein provided. The lease covers property located in the City of Reedville, County of Washington, State of Oregon.

Exhibit 22-D. This exhibit comprises the following:

Printed form 783, Operator's Sales Contract 3-C, print date of 8-48, which is plaintiff's *Exhibit 4-C*, except that this instrument is executed on October 21, 1948, by and between Richfield Oil Corporation, as Seller, and Raymond R. Mathis, as Buyer, for the period commencing November 1, 1948, and ending June 29, 1956. The quantity provision of the printed form is as follows:

	Minimum	Maximum
Gasolines	6,500 gallons	9,000 gallons
Lubricating oils	90 gallons	150 gallons
Greases	350 pounds	500 pounds

The lease refers to Buyer's service station located in Reedville, Oregon, and the instrument contains the following inserted paragraph:

> "In the event of any termination of that certain Operator's Lease executed concurrently herewith by and between the parties hereto this Operator's Sales Contract shall automatically terminate without notice [fol. 535] or action on the part of either party hereto."

Exhibit 22-E. This exhibit comprises the following:

Printed form 668, Operator's Lease 3-C, print date of 9-48, which is plaintiff's *Exhibit 4-D*, except that this instrument is executed on December 23, 1950, by and between Richfield Oil Corporation, as Lessor, and Raymond R. Mathis, as Lessee, covering premises in the City of Reedville, County of Washington, State of Oregon, for the term commencing December 1, 1950 and ending June 29, 1956.

Exhibit 22-F. This exhibit comprises the following:

Printed form 783, Operator's Sales Contract 3-C, print date of 8-48, which is plaintiff's *Exhibit 4-C*, except that this instrument is executed on December 23, 1950, by and between Richfield Oil Corporation, as Seller, and Raymond R. Mathis, as Buyer, for the period commencing December 1, 1950, and ending June 29, 1956. The quantity provision of the printed form is as follows:

	Minimum	Maximum
Gasolines	5,264 gallons	9,000 gallons
Lubricating oils	53 gallons	90 gallons
Greases	53 pounds	90 pounds

The contract makes reference to Buyer's service station in Reedville, in the State of Oregon, and contains the following inserted paragraph:

> "In the event of any termination of that certain Operator's Lease executed concurrently herewith by and between the parties hereto this Operator's Sales Contract shall automatically terminate without notice or action on the part of either party hereto."

[fol. 536] *Exhibit 23.* This exhibit comprises the following:

Printed form 542, Service Station Lease, print date of 9-41, which is like plaintiff's *Exhibit 1-B*, except that this instrument is executed on January 9, 1942, by and between Richfield Oil Corporation, as Lessor, and James T. Smith, as Lessee, covering premises located at Imperial Highway and Figueroa Street, in the City of Los Angeles, County of

Los Angeles, State of California. The commencement date of the lease is January 12, 1942. The lease provides for a rental equal to $70.00 per month and excludes any rental computed on a gallonage basis.

Printed form 542-F, rider to the Service Station Lease, print date of 4-42, which is like plaintiff's *Exhibit 1-F*, except that this instrument is executed on July 14, 1942, by and between Richfield Oil Corporation, as Lessor, and James T. Smith, as Lessee. This instrument is a rider to the above described printed form 542, Service Station Lease, print date of 9-41, and provides that effective on July 1, 1942, the rental covering the premises described therein shall be $35.00 per month and no more.

Printed form 542-F, rider to the Service Station Lease, print date of 4-42, which is like plaintiff's Exhibit 1-F, except that this instrument is executed on February 10, 1943, by and between Richfield Oil Corporation, as Lessor, and James T. Smith, as Lessee. This instrument is a rider to the above described form 542, Service Station Lease, print date of 9-41, and provides that effective on January 1, 1943, the rental covering the premises described therein shall be $1.00 per month and no more.

Printed form 542-F, rider to the Service Station Lease, [fol. 537] print date of 4-42, which is like plaintiff's *Exhibit 1-F*, except that this instrument is executed on February 29, 1944, by and between Richfield Oil Corporation as Lessor, and James T. Smith, as Lessee. This instrument is a rider to the above described form 542, Service Station Lease, print date of 9-41, and provides that effective on March 1, 1944, the rental covering the premises described therein shall be $100.00 per month and no more.

Printed form 542-E, rider to the Service Station Lease, print date of 4-42 which is like plaintiff's *Exhibit 1-C*, except that this instrument is executed on March 21, 1944, by and between Richfield Oil Corporation, as Lessor, and James T. Smith, as Lessee. This instrument is a rider to the above described form 542, Service Station Lease, print date of 9-41, and provides that effective on April 1, 1944, the rental for the premises described therein shall be $100.00 per month, plus 1¢ per gallon of gasoline received by the Lessee on the demised premises in excess of 10,000 gallons.

Exhibit 24. This exhibit comprises the following:

Printed form 362, Service Station Lease 3-C, print date of 1-46, which is like plaintiff's *Exhibit 4,* except that this instrument is made and entered into on April 23, 1946, by and between Howard F. Smith and Mary Smith, his wife, as Lessors, and Richfield Oil Corporation, as Lessee, covering property located within the City of Vancouver, County of Clark, State of Washington, for the period commencing May 1, 1946, and ending April 30, 1951.

Exhibit 24-A. This exhibit comprises the following:

Printed form 668, Operator's Lease 3-C, print date of 11-45, which is plaintiff's *Exhibit 4-A,* except that this in-
[fol. 538] strument is executed on April 23, 1946, by and between Richfield Oil Corporation, as Lessor, and Howard F. Smith, as Lessee, for certain premises located within the City of Vancouver, County of Clark, State of Washington, for the period commencing May 1, 1945 and ending April 29, 1951, unless sooner terminated in the manner provided therein.

Exhibit 24-B. This exhibit comprises the following:

Printed form 783, Operator's Sales Contract 3-C, print date of 1-46, which is like plaintiff's *Exhibit 4-B,* except that this instrument is executed on April 23, 1946, by and between Richfield Oil Corporation, as Seller, and Howard F. Smith, as Buyer, covering the period commencing May 1, 1946 and ending April 29, 1951. The table entitled "Minimum" in the printed form has not been filled in. The contract refers to Buyer's service station at Fourth Plain Road, Vancouver, Washington, and contains the following inserted paragraph:

> "In the event of any termination of that certain Operator's Lease executed concurrently herewith by and between the parties hereto this Operator's Sales Contract shall automatically terminate without notice or action on the part of either party hereto."

Exhibit 24-C. This exhibit comprises the following:

Printed form 668, Operator's Lease 3-C, print date of 9-48, which is plaintiff's *Exhibit 4-D,* except that this in-

strument is executed on October 21, 1948, by and between Richfield Oil Corporation, as Lessor, and Howard F. Smith, as Lessee, covering premises in the City of Vancouver, County of Clark, State of Washington, for the period commencing November 1, 1948, and ending April 29, 1951, unless sooner terminated in the manner provided therein.

[fol. 539] *Exhibit 24-D.* This exhibit comprises the following:

Printed form 783, Operator's Sales Contract 3-C, print date of 8-48, which is plaintiff's *Exhibit 4-C,* except that this instrument is executed on October 21, 1948, by and between Richfield Oil Corporation, as Seller, and Howard F. Smith, as Buyer, for the period commencing November 1, 1948 and ending April 29, 1951, with reference made to Buyer's service station at Fourth Plain Avenue, Vancouver, Washington. The quantity provision of the printed form is as follows:

	Minimum	Maximum
Gasolines	4,000 gallons	6,000 gallons
Lubricating oils	120 gallons	150 gallons
Greases	60 pounds	100 pounds

The contract also includes the following inserted paragraph:

> "In the event of any termination of that certain Operator's Lease executed concurrently herewith by and between the parties hereto this Operator's Sales Contract shall automatically terminate without notice or action on the part of either party hereto."

[fol. 540] Section II—Defendant's Exhibits

Exhibit A. That portion of this exhibit which comprises the following:

Index pages 8, 9, 10, 11, 12 and 13.

Printed forms of various print dates, briefly described as follows:

(a) Form 542, Service Station Lease, and related form 542-A, its Exhibit "A"; form 542-E and form 542-F, its

rental riders; and form 1095, Truck Service Station Lease; all of which were or are used in connection with L. O. service stations and which are, or are like, plaintiff's Exhibits 1, 1-A to 1-G, inclusive, and 2;

(b) Form 306, Service Station Lease 2-B; form 494, Sublease; form 493-A, Consent to Assign; form 493, Assignment of Lease; form 398, Sales Contract; form 362 Service Station Lease 3-C; form 668, Operator's Lease 3-C; and form 783, Operator's Sales Contract 3-C; all of which were or are used in connection with the 2-B or 3-C type of service station and which are, or are like, plaintiff's Exhibits 3, 3-A to 3-D, inclusive, and 4 to 4-D, inclusive;

(c) Form 543, Sales Contract; form 337, Sales Contract; Agreement to Amend, Schedule "A" (to form 337); form 123-C, Painting Agreement; and form 59, Painting Agreement, all of which were or are used in connection with dealer stations and which are, or are like, plaintiff's Exhibits 5 to 5-I, inclusive.

Exhibit II. This exhibit comprises the following:

Printed form 783, Operator's Sales Contract 3-C, print date 8-40, being like plaintiff's *Exhibit 4-B*, except that this instrument is executed on December 7, 1945, by and between Richfield Oil Corporation, as Seller, and James Moore, as [fol. 541] Buyer, for the period commencing October 1, 1945, and ending March 30, 1951. The quantity provision of the printed form is as follows:

	Minimum
Gasolines	10,000 gallons
Lubricating oils	350 gallons
Greases	175 pounds

The contract refers to Buyer's service station at 56 North Riverside Avenue, Medford, Oregon, and contains the following inserted paragraph:

> "In the event of any termination of that certain Operator's Lease executed concurrently herewith by and between the parties hereto this Operator's Sales Contract shall automatically terminate without notice or action on the part of either party hereto."

Printed form 668, Operator's Lease 3-C, print date of 11-45, being plaintiff's *Exhibit 4-A*, except that this instrument is executed on December 7, 1945, by and between Richfield Oil Corporation, as Lessor, and James Moore, as Lessee, for the period commencing October 1, 1945 and ending March 30, 1951, unless sooner terminated in the manner provided therein.

Exhibit H-1. This exhibit comprises the following:

Printed form 783, Operator's Sales Contract 3-C, print date of 8-48, being plaintiff's *Exhibit 4-C*, except that this instrument is executed on February 10, 1950, by and between Richfield Oil Corporation, as Seller, and James Moore, as Buyer, for the period commencing on February 1, 1950 and ending on March 30, 1951. The quantity provision of the printed form is as follows:

[fol. 542]

	Minimum	Maximum
Gasolines	12,219 gallons	14,663 gallons
Lubricating oils	367 gallons	440 gallons
Greases	183 pounds	220 pounds

The contract refers to Buyer's service station at 56 North Riverside Drive, Medford, Oregon, and contains the following inserted paragraph:

> "In the event of any termination of that certain Operator's Lease executed concurrently herewith by and between the parties hereto this Operator's Sales Contract shall automatically terminate without notice or action on the part of either party hereto."

Printed form 668, Operator's Lease 3-C, print date of 9-48, being plaintiff's *Exhibit 4-D*, except that this instrument is executed on February 10, 1950, by and between Richfield Oil Corporation, as Lessor, and James Moore, as Lessee, for the period commencing on February 1, 1950 and ending on March 30, 1951, unless sooner terminated in the manner provided therein.

Exhibit H-2. This exhibit comprises the following:

Printed form 337, Sales Contract, print date of 8-48, being plaintiff's *Exhibit 5-D*, except that this instrument is executed on January 25, 1951, by and between Richfield Oil Corporation, as Seller, and James F. Moore, as Buyer, for the period commencing April 1, 1951 and ending March 31, 1953. Reference is made in the contract to Buyer's service station at 56 North Riverside Drive, Medford, Oregon. The quantity provision of the printed form is as follows:

[fol. 543]	Minimum	Maximum
Gasolines	12,538 gallons	18,000 gallons
Lubricating oils	125 gallons	180 gallons
Greases	125 pounds	180 pounds

Exhibit O-2. This exhibit comprises the following:

Chart of Authorized Signatures, effective February 15, 1939, which is like defendant's Exhibit O-1, except that the latter is effective March 1, 1941.

Exhibit P-1. This exhibit comprises the following:

A certification dated April 11, 1951, by Cleve B. Bonner, Secretary of Richfield Oil Corporation, of the adoption by Resolution of the Board of Directors of said corporation, on June 26, 1946, of the capital expenditure budget represented by defendant's Exhibit P.

Exhibit AE. This exhibit comprises the following:

Contract between Defense Supplies Corporation and Richfield Oil Corporation, dated February 3, 1942, which is a part of Request for Admission Under Rule 36, dated October 13, 1950.

Exhibit AE-1. This exhibit comprises the following:

Contract between Defense Supplies Corporation and Richfield Oil Corporation, dated February 20, 1943, which is a part of Request for Admission Under Rule 36, dated October 13, 1950.

Exhibit AE-2. This exhibit comprises the following:

A telegram dated December 2, 1941, from Ralph K. Davies, Deputy Petroleum Coordinator, addressed to C. S. Jones, President, Richfield Oil Corporation, concerning expansion of 100 octane aviation gasoline refining capacity, which is part of Request for Admission Under Rule 36, dated October 13, 1950.

Exhibit AE-3. This exhibit comprises the following:

[fol. 544] A telegram dated September 3, 1943, from George L. Parkhurst, Chief, New Facilities and Economics Section—Refining Division, to E. W. Isom, Sinclair Refining Company, concerning Certificate of Necessity Application for Richfield Oil Corporation 100 octane aviation gasoline project, which is a part of Request for Admission Under Rule 36, dated October 13, 1950.

[fols. 545-550] Proofs of Service of Appeal Papers—
(Omitted in printing)

[fol. 551] [File endorsement omitted.]

In United States District Court

[Title omitted]

Stipulation for Release of Exhibits and Order Thereon—
Filed September 13, 1951

It is hereby stipulated by and between the parties to the above entitled action by and through their respective counsel that all of the exhibits therein introduced by either party in evidence at the trial of said action and now in the custody of the Clerk of the United States District Court for the Southern District of California, Central Division, may be released by said Clerk and forwarded to the Clerk of the Supreme Court of the United States for the purpose of

[fol. 552] using the same in preparation of the record on appeal.

Dated: September 6, 1951.

William C. Dixon, Special Assistant to the Attorney General, By William C. Dixon, Attorney for Plaintiff.

William J. DeMartini, Robert E. Paradise, By William J. DeMartini, Attorneys for Defendant.

So ordered.

September 10, 1951.

Leon R. Yankwich, United States District Court Judge.

[fol. 552a] Clerk's Certificate to foregoing transcript omitted in printing.

[fols. 552b-552c] Supreme Court of the United States

October Term, 1951

No. 395

[File endorsement omitted.]

[Title omitted]

Statement of Points to be Relied Upon and Designation of Parts of Record to be Printed—Filed October 26, 1952

Pursuant to Rule 13, paragraph 9 of the Revised Rules of the Supreme Court of the United States, Richfield Oil Corporation, Appellant in the above cause, hereby designates and adopts its Assignment of Errors as its statement of the points to be relied upon and designates for printing by the Clerk of this Court the whole of the record as filed as necessary for the consideration of this cause.

Dated: October 23, 1951.

Robert E. Paradise, Wm. J. DeMartini, Counsel for Appellant.

[fol. 552d] SUPREME COURT OF THE UNITED STATES

October Term, 1951

No. 395

[Title omitted]

STIPULATION DESIGNATING PORTIONS OF THE TRANSCRIPT TO BE EXCLUDED FROM THE PRINTED RECORD—Filed November 14, 1951

It is hereby stipulated by and between the parties hereto, through their respective counsel, that the following portions of the Transcript on Appeal shall be excluded from the printed record on appeal and the Clerk of the Supreme Court is hereby authorized to omit said portions from said printed record:

(a) Plaintiff's Exhibits 6, 6A, 6-B, 6-C, 6-D, 6-E, 6-F, 17-D and 18-D, and

(b) Defendant's Exhibits G, P (all except first page) and Q.

It is understood that the portions excluded remain as a part of the Transcript on Appeal and that notwithstanding the exclusion from the printed record such excluded portions, or any part thereof, may be referred to by either party in their briefs or oral arguments or in any proceed-
[fols. 552e-552f] ings incident to this appeal.

Dated: November 9, 1951.

Philip B. Perlman, Solicitor General of The United States, Department of Justice.

Robert E. Paradise, Wm. J. DeMartini, Counsel for Appellant.

* * * * * * *

[fol. 552g] SUPREME COURT OF THE UNITED STATES

No. 395, October Term, 1951

[Title omitted]

ORDER NOTING PROBABLE JURISDICTION—November 13, 1951

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Mr. Justice Clark took no part in the consideration or decision of this question.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 395

RICHFIELD OIL CORPORATION, APPELLANT,

vs.

THE UNITED STATES OF AMERICA

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

VOL. II

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Government Exhibit 1

RICHFIELD OIL CORPORATION
SERVICE STATION LEASE

THIS LEASE made and entered into this ..... day of ....., 19....,

by and between RICHFIELD OIL CORPORATION, hereinafter referred to as "Lessor", and .....

....., hereinafter referred to as "Lessee".

WITNESSETH:

DESCRIPTION OF PROPERTY

That in consideration of the payment of the rents and the performance of the covenants and agreements herein set forth to be kept and performed on the part of Lessee, Lessor does hereby lease to Lessee that certain real property situated in the City of ....., County of ....., State of ....., more particularly described in paragraph "1" of Schedule "A" hereof, together with all appurtenances thereunto belonging and with all improvements, buildings, fixtures, equipment and facilities situated thereon as are fully described in said Schedule "A".

TERM

TO HAVE AND TO HOLD unto Lessee for the period commencing .....,

19 , and continuing until terminated by either party on the day of .....

or the day of of any calendar year by means of a written notice of election to terminate served on the other party in the manner herein prescribed in Paragraph "13" hereof at least thirty days prior to the effective date of termination therein specified.

It is further agreed:

RENT

1. Lessee shall pay to Lessor as rent for the premises and property leased hereunder the following sums per month:

January	$	May	$	September	$
February	$	June	$	October	$
March	$	July	$	November	$
April	$	August	$	December	$

All such rentals shall be payable monthly in advance on the first day of the calendar month. Rent for any fractional part of a month shall be duly prorated on the basis of the rent for said month as hereinabove specified. In addition to the aforesaid rental, Lessee shall pay to Lessor as rental for each month of the effective term hereof a sum computed by multiplying the total number of gallons of gasoline in excess of the number of gallons set forth below, delivered to the demised premises during the month for which payment is being made, for resale and distribution therefrom, by the rates following, to-wit:

For the month of January	¢ per gallon of gasoline in excess of	gallons
For the month of February	¢ per gallon of gasoline in excess of	gallons
For the month of March	¢ per gallon of gasoline in excess of	gallons
For the month of April	¢ per gallon of gasoline in excess of	gallons
For the month of May	¢ per gallon of gasoline in excess of	gallons
For the month of June	¢ per gallon of gasoline in excess of	gallons
For the month of July	¢ per gallon of gasoline in excess of	gallons
For the month of August	¢ per gallon of gasoline in excess of	gallons
For the month of September	¢ per gallon of gasoline in excess of	gallons
For the month of October	¢ per gallon of gasoline in excess of	gallons
For the month of November	¢ per gallon of gasoline in excess of	gallons
For the month of December	¢ per gallon of gasoline in excess of	gallons

said payments to be made on or before the tenth day of the next succeeding calendar month. Anything to the contrary in this paragraph contained notwithstanding, the rentals payable for the period commencing ....., 19 and ending ....., 19 , shall be $ ..... per month and no more. Lessee agrees that upon demand of Lessor, he will deposit cash or post a bond as security for the payment of rent hereunder, in an amount equal to the estimated average monthly rent payable hereunder.

USE

2. The improvements, buildings and facilities erected and located on the demised premises are designed for the operation of a gasoline service station thereon, and Lessee shall use the demised premises and property primarily for such purpose; and in no event shall said premises be used for any unlawful or offensive purpose, nor shall Lessee commit any nuisance thereon. In the event the sale of gasoline or other petroleum products upon the demised premises or the operation of a gasoline service station thereon is prevented by law or the whole, or such part of the demised premises as will render the balance thereof unsatisfactory for the operation of a gasoline service station thereon, is taken for public use, this lease shall forthwith terminate.

MAINTENANCE

3. Lessee shall, during the term hereof, maintain the demised premises, improvements, buildings, fixtures and equipment in good order and repair and in a clean and safe condition. In the event of Lessee's failure so to do, Lessor may enter upon the demised premises and make the necessary repairs for the account of Lessee and/or may terminate this lease. Lessee shall make no change, alteration or substitution in the demised premises, improvements, buildings, fixtures and equipment except such as may be necessary to enable Lessee to continue business on said premises, unless the consent in writing of Lessor be first obtained.

REDELIVERY

4. Upon the expiration or sooner termination of this agreement, Lessee shall yield up and return to Lessor the demised premises, improvements, buildings, fixtures and equipment in as good condition as when received by Lessee, damage and depreciation due to ordinary wear and use excepted; and shall pay Lessor the cost of restoring the premises, improvements, buildings, fixtures and equipment to the condition in which they were at the time when received by Lessee, damage and depreciation due to ordinary wear and use excepted, together with the value of any equipment lost or damaged beyond repair.

ACT OF GOD

5. Should any of the improvements on the demised premises be destroyed by act of God, fire, explosion, the elements or any cause not due to the negligence, neglect or willful act of Lessee and be thereby rendered unsatisfactory for the conduct of Lessee's business thereon, Lessor shall be privileged to terminate this lease or repair the premises in which event rent payable by Lessee hereunder shall be abated for the time and to the extent that he is prevented from using the premises or any part thereof.

UTILITIES

6. During the occupancy of the demised premises, Lessee shall pay all charges accruing for gas, water, electricity, telephone and other public utilities, and shall not permit any liens to attach to the demised premises. Upon failure of Lessee in this respect, Lessor may, but shall not be obligated to, pay such charges and add the same to the rental payable hereunder.

DEFAULT

7. Should Lessee at any time fail to faithfully and diligently comply with the terms, conditions and covenants of this lease on his part to be performed, or should Lessee abandon or vacate the demised premises, or should Lessee default in payment of rent at the time due, or should bankruptcy or insolvency proceedings under the bankruptcy laws of the United States or any state be instituted by or against Lessee, or should any attachment, garnishment, execution or any other legal proceeding be levied or instituted by anyone other than Lessor against the premises or any of the equipment thereon in any action in which Lessee is named as defendant, or should Lessee attempt to sell, assign, pledge or mortgage the said premises or any part thereof, or allow any lien to attach thereto, or should Lessee enter into a composition for the benefit of creditors, Lessor may, without notice, immediately terminate this lease and re-enter and resume possession of the premises, improvements, buildings, fixtures and equipment.

WAIVER

8. The waiver of any breach hereunder shall not be deemed a continuing waiver or a waiver of any subsequent breach, whether of the same or a different provision of this agreement.

ASSIGNMENT

9. This lease shall not be assignable, voluntarily or by operation of law, nor shall Lessee sublet any part of the demised premises without the written consent of Lessor first having been obtained. This lease shall not become an asset of the estate of Lessee but shall terminate on his death.

INDEMNITY

10. Lessee agrees to indemnify and hold Lessor free and harmless from any and all claims for damage to property or injury to or death of person or persons occurring upon the demised premises or arising out of any of the operations of Lessee, his agents or employees, thereon or thereabout during the term hereof.

PRIOR LEASES

11. Although this instrument is designated as a lease, it is nevertheless understood that it is in fact a sublease and is subordinate and subject to all the terms, provisions and conditions contained in that certain lease dated the ..... day of ....., 19....., by and between ....., as lessor, and ....., whose interest Lessor herein has succeeded). The relinquishment, expiration or sooner termination of said lease shall of itself result in the termination of this lease without notice and without liability on the part of Lessor herein. Lessor herein shall be privileged to amend, modify or extend the above described lease without notice to Lessee herein in which event this lease shall become subject to the terms, provisions and conditions of said lease as modified, amended or extended.

ATTORNEY'S FEES

12. In the event Lessor shall employ an attorney or attorneys in connection with the pursuit of any of Lessor's rights, powers or privileges hereunder, Lessee shall pay, in addition to all other sums hereunder, a reasonable attorney's fee.

NOTICES

13. Any demands or notices required or permitted to be served hereunder shall be deemed properly served when deposited, postage prepaid, registered, in the United States mail, addressed to Lessee at the address of the demised premises, or to Lessee at 555 South Flower Street, Los Angeles, California. In lieu of mailing, as aforesaid, such demands and notices may be personally served upon Lessee.

OTHER AGREEMENTS

14. From the effective date of commencement hereof, this lease terminates and supersedes any lease or other agreement between Lessee and Lessor, or the predecessors of Lessor, under the terms of which Lessee was privileged to occupy the demised premises.

EXECUTION

15. This agreement shall not be binding upon Lessor until executed by a duly authorized officer or agent of Lessor and a fully executed copy hereof delivered to Lessee.

IN WITNESS WHEREOF, the parties have executed these premises as of the date hereinabove written.

RICHFIELD OIL CORPORATION

By .....

.....
Lessor

.....
Lessee

Government Exhibit 1-A

RICHFIELD OIL CORPORATION
SERVICE STATION LEASE

THIS LEASE made and entered into this.....day of....., 19....., by and between RICHFIELD OIL CORPORATION, hereinafter referred to as "Lessor", and....., hereinafter referred to as "Lessee",

WITNESSETH:

DESCRIPTION OF PROPERTY

That in consideration of the payment of the rents and the performance of the covenants and agreements herein set forth to be kept and performed on the part of Lessee, Lessor does hereby lease to Lessee that certain real property situated in the City of....., County of....., State of....., more particularly described in paragraph "1" of Schedule "A" hereof, together with all appurtenances thereunto belonging and with all improvements, buildings, fixtures, equipment and facilities situated thereon as are fully described in said Schedule "A".

TO HAVE AND TO HOLD unto Lessee for the period commencing..... 19....., and continuing until terminated by either party on the.....day of..... or the.....day of.....of any calendar year by means of a written notice of election to terminate served on the other party in the manner herein prescribed in Paragraph "13" hereof at least thirty days prior to the effective date of termination therein specified.

It is further agreed:

1. Lessee shall pay to Lessor as rent for the premises and property leased hereunder the following sums per month:

January	$.....	May	$.....	September	$.....
February	$.....	June	$.....	October	$.....
March	$.....	July	$.....	November	$.....
April	$.....	August	$.....	December	$.....

All such rentals shall be payable monthly in advance on the first day of the calendar month. Rent for any fractional part of a month shall be duly prorated on the basis of the rent for said month as hereinabove specified. In addition to the aforesaid rental, Lessee shall pay to Lessor as rental for each month of the effective term hereof a sum computed by multiplying the total number of gallons of gasoline in excess of the number of gallons set forth below, received by Lessee on the demised premises during the month for which payment is being made, for resale and distribution therefrom, by the rates following, to-wit:

For the month of January.....¢ per gallon of gasoline in excess of.....gallons
For the month of February.....¢ per gallon of gasoline in excess of.....gallons
For the month of March.....¢ per gallon of gasoline in excess of.....gallons
For the month of April.....¢ per gallon of gasoline in excess of.....gallons
For the month of May.....¢ per gallon of gasoline in excess of.....gallons
For the month of June.....¢ per gallon of gasoline in excess of.....gallons
For the month of July.....¢ per gallon of gasoline in excess of.....gallons
For the month of August.....¢ per gallon of gasoline in excess of.....gallons
For the month of September.....¢ per gallon of gasoline in excess of.....gallons
For the month of October.....¢ per gallon of gasoline in excess of.....gallons
For the month of November.....¢ per gallon of gasoline in excess of.....gallons
For the month of December.....¢ per gallon of gasoline in excess of.....gallons

said payments to be made on or before the tenth day of the next succeeding calendar month. Anything to the contrary in this paragraph contained notwithstanding, the rentals payable for the period commencing....., 19....., and ending....., 19....., shall be $.....per month and no more. Lessee agrees that upon demand of Lessor, he will deposit cash or post a bond as security for the payment of rent hereunder, in an amount equal to the estimated average monthly rent payable hereunder.

2. The improvements, buildings and facilities erected and located on the demised premises are designed for the operation of a gasoline service station thereon, and Lessee shall use the demised premises and property primarily for such purpose, keeping the same at all times adequately supplied with the usual grades of gasoline and lubricants and open for business during the customary business hours; and in no event shall said premises be used for any unlawful or offensive purpose, nor shall Lessee commit any nuisance thereon. In the event the sale of gasoline or other petroleum products upon the demised premises or the operation of a gasoline service station thereon is prevented by law or the whole, or such part of the demised premises as will render the balance thereof unsatisfactory for the operation of a gasoline service station thereon, is taken for public use, this lease shall forthwith terminate.

ENHANCE

3. Lessee shall, during the term hereof, maintain the demised premises, improvements, buildings, fixtures and equipment in good order and repair and in a clean and safe condition. In the event of Lessee's failure so to do, Lessor may enter upon the demised premises and make the necessary repairs for the account of Lessee and/or may terminate this lease. Lessee shall make no change, alteration or substitution in the demised premises, improvements, buildings, fixtures and equipment except such as may be necessary to enable Lessee to continue business on said premises, unless the consent in writing of Lessor be first obtained.

REDELIVERY

4. Upon the expiration or sooner termination of this agreement, Lessee shall yield up and return to Lessor the demised premises, improvements, buildings, fixtures and equipment in as good condition as when received by Lessee, damage and depreciation due to ordinary wear and use excepted; and shall pay Lessor the cost of restoring the premises, improvements, buildings, fixtures and equipment to the condition in which they were at the time when received by Lessee, damage and depreciation due to ordinary wear and use excepted, together with the value of any equipment lost or damaged beyond repair.

ACT OF GOD

5. Should any of the improvements on the demised premises be destroyed by act of God, fire, explosion, the elements or any cause not due to the negligence, neglect or willful act of Lessee and be thereby rendered unsatisfactory for the conduct of Lessee's business thereon, Lessor shall be privileged to terminate this lease or repair the premises in which event rent payable by Lessee hereunder shall be abated for the time and to the extent that he is prevented from using the premises or any part thereof.

UTILITIES

6. During the occupancy of the demised premises, Lessee shall pay all charges accruing for gas, water, electricity, telephone and other public utilities, and shall not permit any liens to attach to the demised premises. Upon failure of Lessee in this respect, Lessor may, but shall not be obligated to, pay such charges and add the same to the rental payable hereunder.

DEFAULT

7. Should Lessee at any time fail to faithfully and diligently comply with the terms, conditions and covenants of this lease on his part to be performed, or should Lessee abandon or vacate the demised premises, or should Lessee default in payment of rent at the time due, or should bankruptcy or insolvency proceedings under the bankruptcy laws of the United States or any state be instituted by or against Lessee, or should any attachment, garnishment, execution or any other legal proceeding be levied or instituted by anyone other than Lessor against the premises or any of the equipment thereon in any action in which Lessee is named as defendant, or should Lessee attempt to sell, assign, pledge or mortgage the said premises or any part thereof, or allow any lien to attach thereto, or should Lessee enter into a composition for the benefit of creditors, Lessor may, without notice, immediately terminate this lease and re-enter and resume possession of the premises, improvements, buildings, fixtures and equipment.

WAIVER

8. The waiver of any breach hereunder shall not be deemed a continuing waiver or a waiver of any subsequent breach, whether of the same or a different provision of this agreement.

ASSIGNMENT

9. This lease shall not be assignable, voluntarily or by operation of law, nor shall Lessee sublet any part of the demised premises without the written consent of Lessor first having been obtained. This lease shall not become an asset of the estate of Lessee but shall terminate on his death.

INDEMNITY

10. Lessee agrees to indemnify and hold Lessor free and harmless from any and all claims for damage to property or injury to or death of person or persons occurring upon the demised premises or arising out of any of the operations of Lessee, his agents or employees, thereon, or thereabout during the term hereof.

PRIOR LEASES

11. Although this instrument is designated as a lease, it is nevertheless understood that it is in fact a sublease and is subordinate and subject to all terms, provisions and conditions contained in that certain lease dated the.....day of....., 19....., by and between ....., as lessor, and ....., as lessee (in whose interest Lessor herein has succeeded). The relinquishment, expiration or sooner termination of said lease shall of itself result in the termination of this lease without notice and without liability on the part of Lessor herein. Lessor herein shall be privileged to amend, modify or extend the above described lease without notice to Lessee herein in which event this lease shall become subject to the terms, provisions and conditions of said lease as modified, amended or extended. Lessor makes no warranty that the aforesaid lease will not by its terms expire, or is not subject to termination prior to the earliest termination date herein provided.

ATTORNEY'S FEES

12. In the event Lessor shall employ an attorney or attorneys in connection with the pursuit of any of Lessor's rights, powers or privileges hereunder, Lessee shall pay, in addition to all other sums hereunder, a reasonable attorney's fee.

NOTICES

13. Any demands or notices required or permitted to be served hereunder shall be deemed properly served when deposited, postage prepaid, registered, in the United States mail, addressed to Lessee at the address of the demised premises, or to Lessor at 555 South Flower Street, Los Angeles, California. In lieu of mailing, as aforesaid, such demands and notices may be personally served upon Lessee.

OTHER AGREEMENTS

14. From the effective date of commencement hereof, this lease terminates and supersedes any lease or other agreement between Lessee and Lessor, or the predecessors of Lessor, under the terms of which Lessee was privileged to occupy the demised premises.

EXECUTION

15. This agreement shall not be binding upon Lessor until executed by a duly authorized officer or agent of Lessor and a fully executed copy hereof, delivered to Lessee. It is agreed that the execution hereof has not been induced by any representation, warranty or agreement other than those herein expressed; and the terms hereof shall not be amended or varied except by a subsequent written instrument executed by the parties.

IN WITNESS WHEREOF, the parties have executed these premises as of the date hereinabove written.

RICHFIELD OIL CORPORATION

By.....

.....
LESSOR

.....
LESSEE

Government Exhibit 1-B

RICHFIELD OIL CORPORATION
SERVICE STATION LEASE

THIS LEASE made and entered into this 24 day of June, 19 43, by and between RICHFIELD OIL CORPORATION, hereinafter referred to as "Lessor", and Dudley C. Smith, hereinafter referred to as "Lessee",

WITNESSETH:

DESCRIPTION OF PROPERTY

That in consideration of the payment of the rents and the performance of the covenants and agreements herein set forth to be kept and performed on the part of Lessee, Lessor does hereby lease to Lessee that certain real property situated in the City of San Bernardino, County of San Bernardino, State of California, together with all appurtenances thereunto belonging and with all improvements, buildings, fixtures, equipment and facilities situated thereon, all as are fully described in Schedule "A" hereof.

TERM

TO HAVE AND TO HOLD unto Lessee for the period commencing June 24th, 1943, and continuing until terminated by either party by means of a written notice of election to terminate served on the other party in the manner prescribed in Paragraph "14" hereof at least twenty-four hours prior to the effective date of termination specified in such notice.

It is further agreed:

RENT

1. Lessee shall pay to Lessor as rent for the premises and property leased hereunder the following sums per month:

January	$ 00.00	May	$ 00.00	September	$ 00.00
February	$ 00.00	June	$ 00.00	October	$ 00.00
March	$ 00.00	July	$ 00.00	November	$ 00.00
April	$ 00.00	August	$ 00.00	December	$ 00.00

All such rentals shall be payable monthly in advance on the first day of the calendar month. Rent for any fractional part of a month shall be duly prorated on the basis of the rent for said month as herein specified. In addition to the aforesaid rental, Lessee shall pay to Lessor as rental for each month of the effective term hereof a sum computed by multiplying the total number of gallons of gasoline in excess of the number of gallons set forth below, received by Lessee on the demised premises during the month for which payment is being made, for resale and distribution therefrom, by the rates following, to-wit:

For the month of January	1	¢ per gallon of gasoline in excess of	0000 gallons
For the month of February	1	¢ per gallon of gasoline in excess of	0000 gallons
For the month of March	1	¢ per gallon of gasoline in excess of	0000 gallons
For the month of April	1	¢ per gallon of gasoline in excess of	0000 gallons
For the month of May	1	¢ per gallon of gasoline in excess of	0000 gallons
For the month of June	1	¢ per gallon of gasoline in excess of	0000 gallons
For the month of July	1	¢ per gallon of gasoline in excess of	0000 gallons
For the month of August	1	¢ per gallon of gasoline in excess of	0000 gallons
For the month of September	1	¢ per gallon of gasoline in excess of	0000 gallons
For the month of October	1	¢ per gallon of gasoline in excess of	0000 gallons
For the month of November	1	¢ per gallon of gasoline in excess of	0000 gallons
For the month of December	1	¢ per gallon of gasoline in excess of	0000 gallons

said payments to be made on or before the tenth day of the next succeeding calendar month. In case of fractional monthly periods the number of gallons shown in the last column above will be duly prorated and the gallonage rental will be paid on the gallons of gasoline delivered in excess of such prorated amount.

2. The improvements, buildings and facilities erected and located on the demised premises are designed for the operation of a gasoline service station thereon, and Lessee shall use the demised premises and property primarily for such purpose, keeping the same at all times adequately supplied with the usual grades of gasoline and lubricants and open for business during the hours hereinafter specified; and in no event shall said premises be used for any unlawful or offensive purpose, nor shall Lessee commit any nuisance thereon. In the event the sale of gasoline or other petroleum products upon the demised premises or the operation of a gasoline service station thereon is prevented by law or the whole, or such part of the demised premises as will render the balance thereof unsatisfactory for the operation of a gasoline service station thereon, is taken for public use, this lease shall forthwith terminate.

MAINTENANCE

3. Lessee shall, during the term hereof, maintain the demised premises, improvements, buildings, trees, shrubs, lawns, fixtures and equipment in good order and repair and in a clean and safe condition. In the event of Lessee's failure so to do, Lessor may enter upon the demised premises and make the necessary repairs for the account of Lessee and/or may terminate this lease. Lessee shall make no change, alteration or substitution in the demised premises, improvements, buildings, fixtures and equipment except such as may be necessary to enable Lessee to continue business on said premises, unless the consent in writing of Lessor be first obtained.

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REDELIVERY

4. Upon the expiration or sooner termination of this agreement, Lessee shall yield up and return to Lessor the demised premises, improvements, buildings, fixtures and equipment in as good condition as when received by Lessee, damage and depreciation due to ordinary wear and use excepted; and shall pay Lessor the cost of restoring the premises, improvements, buildings, fixtures and equipment to the condition in which they were at the time when received by Lessee, damage and depreciation due to ordinary wear and use excepted, together with the value of any equipment lost or damaged beyond repair.

ACT OF GOD

5. Should any of the improvements on the demised premises be destroyed by act of God, fire, explosion, the elements or any cause not due to the negligence, neglect or willful act of Lessee and be thereby rendered unsatisfactory for the conduct of Lessee's business thereon, Lessee shall be privileged to terminate this lease or repair the premises in which event rent payable by Lessee hereunder shall be abated for the time and to the extent that he is prevented from using the premises or any part thereof.

UTILITIES

6. During the occupancy of the demised premises, Lessee shall pay all charges accruing for gas, water, electricity, telephone and other public utilities, and shall not permit any lien to attach to the demised premises. Upon failure of Lessee in this respect, Lessor may, but shall not be obligated to, pay such charges and lien obligations, and add the same to the rental payable hereunder.

DEFAULT

7. Should Lessee at any time fail to faithfully and diligently comply with the terms, conditions and covenants of this lease on his part to be performed, or should Lessee abandon or vacate the demised premises, or should Lessee default in payment of rent at the time due, or should bankruptcy or insolvency proceedings under the bankruptcy laws of the United States or any state be instituted by or against Lessee, or should any attachment, garnishment, execution or any other legal proceeding be levied or instituted by anyone other than Lessor against the premises or any of the equipment thereon in any action in which Lessee is named as defendant, or should Lessee attempt to sell, assign, pledge or mortgage the said premises or any part thereof, or allow any lien to attach thereto, or should Lessee enter into a composition for the benefit of creditors, Lessor may, without notice, immediately terminate this lease and re-enter and resume possession of the premises, improvements, buildings, fixtures and equipment.

WAIVER

8. The waiver of any breach hereunder shall not be deemed a continuing waiver or a waiver of any subsequent breach, whether of the same or a different provision of this agreement.

ASSIGNMENT

9. This lease shall not be assignable, voluntarily or by operation of law, nor shall Lessee sublet any part of the demised premises without the written consent of Lessor first having been obtained. This lease shall not become an asset of the estate of Lessee but shall terminate on his death. In the event there are more than one Lessee the interest of any deceased Lessee shall pass to his survivors.

INDEMNITY

10. Lessee agrees to indemnify and hold Lessor free and harmless from any and all claims for damage to property or injury to or death of person or persons occurring upon the demised premises or arising out of any of the operations of Lessee, his agents or employees, thereon, or thereabout during the term hereof.

PRIOR LEASES

11. Although this instrument is designated as a lease, it is nevertheless understood that it is in fact a sublease and is subordinate and subject to all terms, provisions and conditions contained in that certain lease dated the 28 day of March, 1932, by and between Margaret Salt [redacted], as lessor, and Richfield Stations Inc. [redacted], as lessee (to whose interest Lessor herein has succeeded). The relinquishment, expiration or sooner termination of said lease shall of itself result in the termination of this lease without notice and without liability on the part of Lessor herein, and Lessor shall be privileged to terminate this lease forthwith by notice of a time not exceeding 10 days prior to the termination, relinquishment, or expiration of the above lease so as to permit Lessee to remove its property from the demised premises. Lessor herein shall be privileged to amend, modify or extend the above described lease without notice to Lessee herein in which event this lease shall become subject to the terms, provisions and conditions of said lease as modified, amended or extended. Lessor makes no warranty that the aforesaid lease will not by its terms expire, or is not subject to termination prior to the earliest termination date herein provided.

OPERATION

12. It being understood that the amount of rent payable to Lessor is governed by the number of gallons of gasoline handled on the premises Lessee agrees, for the purpose of producing a maximum of for Lessor, that (1) The service station shall be kept open for business during the hours from [redacted] A.M. to 10:00 P.M. from Mondays to Saturdays inclusive and from 6:00 A.M. to 10:00 P.M. on Sunday, (2) all floodlights shall be lit with 1000 watt lamps from sunset to the closing hours above designated, (3) rest rooms shall be kept in a clean and neat condition and equipped with the necessary articles, (4) the service station business shall be conducted through a sufficient number of trained operators.

ATTORNEY'S FEES

13. In the event Lessor shall employ an attorney or attorneys in connection with the pursuit of any of Lessor's rights, powers or privileges hereunder, Lessee shall pay, in addition to all other sums hereunder, a reasonable attorney's fee.

NOTICES

14. Any demands or notices required or permitted to be served hereunder shall be deemed properly served when deposited, postage prepaid, registered, in the United States mail, addressed to Lessee at the address of the demised premises, or to Lessor at 646 South Flower Street, Los Angeles, California. In lieu of mailing, as aforesaid, such demands and notices may be personally served upon Lessee.

OTHER AGREEMENTS

15. From the effective date of commencement hereof, this lease terminates and supersedes any lease or other agreement between Lessee and Lessor, or the predecessors of Lessor, under the terms of which Lessee was privileged to occupy the demised premises.

EXECUTION

16. This agreement shall not be binding upon Lessor until executed by a duly authorized officer or agent of Lessor and a fully executed copy hereof delivered to Lessee. It is agreed that the execution hereof has not been induced by any representation, warranty or agreement other than those herein expressed; and the terms hereof shall not be amended or varied except by a subsequent written instrument executed by the parties.

IN WITNESS WHEREOF, the parties have executed these premises as of the date hereinabove written.

RICHFIELD OIL CORPORATION

By [redacted]

Dudley C. Smith

LESSEE

[redacted]

LESSEE'S ADDRESS OF LESSEE

Government Exhibit 1-C

Form [illegible]

This rider is to be attached to that certain Service Station Lease, Form 542, made and entered into the 11th day of June, 1943, between Richfield Oil Corporation, as "Lessor," and Mr. A. Gray, as "Lessee," by which was leased the service station premises commonly known as SE Cor. 4th Avenue & California Street, in the City of San Francisco County of San Francisco, State of California. It is agreed that effective the 1st day of April, 1944, paragraph numbered "1" of said lease, which paragraph is entitled "RENT," shall be stricken therefrom and a new paragraph "1" reading as follows inserted instead and in lieu thereof:

"Lessee shall pay to Lessor as rent for the premises and property leased hereunder the following sums per month:

January	$ 50.00	May	$ 50.00	September	$ 50.00
February	$ 50.00	June	$ 50.00	October	$ 50.00
March	$ 50.00	July	$ 50.00	November	$ 50.00
April	$ 50.00	August	$ 50.00	December	$ 50.00

All such rentals shall be payable monthly in advance on the first day of the calendar month. Rent for any fractional part of a month shall be duly prorated on the basis of the rent for said month as herein specified. In addition to the aforesaid rental, Lessee shall pay to Lessor as rental for each month of the effective term hereof a sum computed by multiplying the total number of gallons of gasoline in excess of the number of gallons set forth below, received by Lessee on the demised premises during the month for which payment is being made, for resale and distribution therefrom, by the rates following, to-wit:

For the month of January	1 ¢ per gallon of gasoline in excess of	6,000	[redacted]	gallons
For the month of February	1 ¢ per gallon of gasoline in excess of	6,000	[redacted]	gallons
For the month of March	1 ¢ per gallon of gasoline in excess of	6,000	[redacted]	gallons
For the month of April	1 ¢ per gallon of gasoline in excess of	6,000	[redacted]	gallons
For the month of May	1 ¢ per gallon of gasoline in excess of	6,000	[redacted]	gallons
For the month of June	1 ¢ per gallon of gasoline in excess of	6,000	[redacted]	gallons
For the month of July	1 ¢ per gallon of gasoline in excess of	6,000	[redacted]	gallons
For the month of August	1 ¢ per gallon of gasoline in excess of	6,000	[redacted]	gallons
For the month of September	1 ¢ per gallon of gasoline in excess of	6,000	[redacted]	gallons
For the month of October	1 ¢ per gallon of gasoline in excess of	6,000	[redacted]	gallons
For the month of November	1 ¢ per gallon of gasoline in excess of	6,000	[redacted]	gallons
For the month of December	1 ¢ per gallon of gasoline in excess of	6,000	[redacted]	gallons

said payments to be made on or before the tenth day of the next succeeding calendar month. In case of fractional monthly periods the number of gallons shown in the last column above will be duly prorated and the gallonage rental will be paid on the gallons of gasoline delivered in excess of such prorated amount."

Executed this 14th day of March 1944

RICHFIELD OIL CORPORATION

By [signature] P. S. Payne
Division Manager For Division Manager

[signature] Lessee (Mr. A. Gray)

[illegible]-512 SF

Government Exhibit 1-D

RICHFIELD OIL CORPORATION
SERVICE STATION LEASE

THIS LEASE made and entered into this ..... day of ....., 19....,

by and between RICHFIELD OIL CORPORATION, hereinafter referred to as "Lessor", and .....

....., hereinafter referred to as "Lessee",

WITNESSETH:

DESCRIPTION OF PROPERTY

That in consideration of the payment of the rents and the performance of the covenants and agreements herein set forth to be kept and performed on the part of Lessee, Lessor does hereby lease to Lessee that certain real property situated in the City of ....., County of ....., State of ....., together with all appurtenances thereunto belonging and with all improvements, buildings, fixtures, equipment and facilities situated thereon, all as are fully described in Schedule "A" hereof.

TERM

TO HAVE AND TO HOLD unto Lessee for the period commencing ....., 19....., and continuing until terminated by either party by means of a written notice of election to terminate served on the other party in the manner prescribed in Paragraph "14" hereof at least twenty-four hours prior to the effective date of termination specified in such notice.

It is further agreed:

RENT

1. Lessee shall pay to Lessor as rent for the premises and property leased hereunder the following sums per month:

January	$	May	$	September	$ .....
February	$	June	$	October	$ .....
March	$	July	$	November	$ .....
April	$	August	$	December	$ .....

All such rentals shall be payable monthly in advance on the first day of the calendar month. Rent for any fractional part of a month shall be duly prorated on the basis of the rent for said month as herein specified. In addition to the aforesaid rental, Lessee shall pay to Lessor as rental for each month of the effective term hereof a sum computed by multiplying the total number of gallons of gasoline in excess of the number of gallons set forth below, received by Lessee on the demised premises during the month for which payment is being made, for resale and distribution therefrom, by the rates following, to-wit:

For the month of January	¢ per gallon of gasoline in excess of	gallons
For the month of February	¢ per gallon of gasoline in excess of	gallons
For the month of March	¢ per gallon of gasoline in excess of	gallons
For the month of April	¢ per gallon of gasoline in excess of	gallons
For the month of May	¢ per gallon of gasoline in excess of	gallons
For the month of June	¢ per gallon of gasoline in excess of	gallons
For the month of July	¢ per gallon of gasoline in excess of	gallons
For the month of August	¢ per gallon of gasoline in excess of	gallons
For the month of September	¢ per gallon of gasoline in excess of	gallons
For the month of October	¢ per gallon of gasoline in excess of	gallons
For the month of November	¢ per gallon of gasoline in excess of	gallons
For the month of December	¢ per gallon of gasoline in excess of	gallons

said payments to be made on or before the tenth day of the next succeeding calendar month. In case of fractional monthly periods the number of gallons shown in the last column above will be duly prorated and the gallonage rental will be paid on the gallons of gasoline delivered in excess of such prorated amount.

USE

2. The improvements, buildings and facilities erected and located on the demised premises are designed for the operation of a gasoline service station thereon, and Lessee shall use the demised premises and property primarily for such purpose; and in no event shall said premises be used for any unlawful or offensive purpose, nor shall Lessee commit any nuisance thereon. In the event the sale of gasoline or other petroleum products upon the demised premises or the operation of a gasoline service station thereon is prevented by law or the whole, or such part of the demised premises as will render the balance thereof unsatisfactory for the operation of a gasoline service station thereon, is taken for public use, this lease shall forthwith terminate.

MAINTENANCE

3. Lessee shall, during the term hereof, maintain the demised premises, improvements, buildings, trees, shrubs, lawns, fixtures and equipment in good order and repair and in a clean and safe condition. In the event of Lessee's failure so to do, Lessor may enter upon the demised premises and make the necessary repairs for the account of Lessee and/or may terminate this lease. Lessee shall make no material change or alteration in the demised premises, improvements, buildings, fixtures and equipment except such as may be necessary to enable Lessee to continue business on said premises, unless the consent in writing of Lessor be first obtained.

REDELIVERY

4. Upon the expiration or sooner termination of this agreement, Lessee shall yield up and return to Lessor the demised premises, improvements, buildings, fixtures and equipment in as good condition as when received by Lessee, damage and depreciation due to ordinary wear and use excepted; and shall pay Lessor the cost of restoring the premises, improvements, buildings, fixtures and equipment to the condition in which they were at the time when received by Lessee, damage and depreciation due to ordinary wear and use excepted, together with the value of any equipment lost or damaged beyond repair.

ACT OF GOD

5. Should any of the improvements on the demised premises be destroyed by act of God, fire, explosion, the elements or any cause not due to the negligence, neglect or willful act of Lessee and be thereby rendered unsatisfactory for the conduct of Lessee's business thereon, Lessee shall be privileged to terminate this lease or repair the premises in which event rent payable by Lessee hereunder shall be abated for the time and to the extent that he is prevented from using the premises or any part thereof.

UTILITIES

6. During the occupancy of the demised premises, Lessee shall pay all charges accruing for gas, water, electricity, telephone and other public utilities, and shall not permit any liens to attach to the demised premises. Upon failure of Lessee in this respect, Lessor may, but shall not be obliged to, pay such charges and lien obligations, and add the same to the rental payable hereunder.

DEFAULT

7. Should Lessee at any time fail to faithfully and diligently comply with the terms, conditions and covenants of this lease on his part to be performed, or should Lessee abandon or vacate the demised premises, or should Lessee default in payment of rent at the time due, or should bankruptcy or insolvency proceedings under the bankruptcy laws of the United States or any state be instituted by or against Lessee, or should any attachment, garnishment, execution or any other legal proceeding be levied or instituted by anyone other than Lessor against the premises or any of the equipment thereon in any action in which Lessee is named as defendant, or should Lessee attempt to sell, assign, pledge or mortgage the said premises or any part thereof, or allow any lien to attach thereto, or should Lessee enter into a composition for the benefit of creditors, Lessor may, without notice, immediately terminate this lease and re-enter and resume possession of the premises, improvements, buildings, fixtures and equipment.

WAIVER

8. The waiver of any breach hereunder shall not be deemed a continuing waiver or a waiver of any subsequent breach, whether of the same or a different provision of this agreement.

ASSIGNMENT

9. This lease shall not be assignable, voluntarily or by operation of law, nor shall Lessee sublet any part of the demised premises without the written consent of Lessor first having been obtained.

INDEMNITY

10. Lessee agrees to indemnify and hold Lessor free and harmless from any and all claims for damage to property or injury to or death of person or persons occurring upon the demised premises or arising out of any of the operations of Lessee, his agents or employees, thereon, or thereabout during the term hereof.

PRIOR LEASES

11. Although this instrument is designated as a lease, it is nevertheless understood that it is in fact a sublease and is subordinate and subject to all terms, provisions and conditions contained in that certain lease dated the.....day of....., 19....., by and between ....., as lessor, and ....., as lessee (to whose interest Lessor herein has succeeded). The relinquishment, expiration or sooner termination of said lease shall of itself result in the termination of this lease without notice and without liability on the part of Lessor herein, and Lessee shall be privileged to terminate this lease forthwith by notice at a time not exceeding 10 days prior to the termination, relinquishment, or expiration of the above lease so as to permit Lessor to remove its property from the demised premises. Lessor herein shall be privileged to amend, modify or extend the above described lease without notice to Lessee herein in which event this lease shall become subject to the terms, provisions and conditions of said lease as modified, amended or extended. Lessor makes no warranty that the aforesaid lease will not by its terms expire, or is not subject to termination prior to the earliest termination date herein provided.

OPERATION

12. It being understood that the amount of rent payable to Lessor is governed by the number of gallons of gasoline handled on the premises Lessee agrees, for the purpose of producing a maximum rent for Lessor, that (1) the rest rooms shall be kept in a clean and neat condition and equipped with the necessary articles, (2) the service station business shall be conducted through a sufficient number of trained operators.

ATTORNEY'S FEES

13. In the event Lessor shall employ an attorney or attorneys in connection with the pursuit of any of Lessor's rights, powers or privileges hereunder, Lessee shall pay, in addition to all other sums hereunder, a reasonable attorney's fee.

NOTICES

14. Any demands or notices required or permitted to be served hereunder shall be deemed properly served when deposited, postage prepaid, registered, in the United States mail, addressed to Lessee at the address of the demised premises, or to Lessor at 555 South Flower Street, Los Angeles, California. In lieu of mailing, as aforesaid, such demands and notices may be personally served upon Lessee.

OTHER AGREEMENTS

15. From the effective date of commencement hereof, this lease terminates and supersedes any lease or other agreement between Lessee and Lessor, or the predecessors of Lessor, under the terms of which Lessee was privileged to occupy the demised premises.

EXECUTION

16. This agreement shall not be binding upon Lessor until executed by a duly authorized officer or agent of Lessor and a fully executed copy hereof delivered to Lessee. It is agreed that the execution hereof has not been induced by any representation, warranty or agreement other than those herein expressed; and the terms hereof shall not be amended or varied except by a subsequent written instrument executed by the parties.

IN WITNESS WHEREOF, the parties have executed these premises as of the date hereinabove written.

RICHFIELD OIL CORPORATION

By.....
LESSOR

.....
LESSEE

.....
MAILING ADDRESS OF LESSEE

Government Exhibit 1-E

Form 542 Set 2-44

RICHFIELD OIL CORPORATION
SERVICE STATION LEASE

THIS LEASE made and entered into this.....day of....., 19....., by and between RICHFIELD OIL CORPORATION, hereinafter referred to as "Lessor", and..... ....., hereinafter referred to as "Lessee",

WITNESSETH:

DESCRIPTION OF PROPERTY

That in consideration of the payment of the rents and the performance of the covenants and agreements herein set forth to be kept and performed on the part of Lessee, Lessor does hereby lease to Lessee that certain real property situated in the City of....., County of ....., State of....., together with all appurtenances thereunto belonging and with all improvements, buildings, fixtures, equipment and facilities situated thereon, all as are fully described in Schedule "A" hereof.

TERM

TO HAVE AND TO HOLD unto Lessee for the period commencing....., 19....., and continuing until terminated by either party by means of a written notice of election to terminate served on the other party in the manner prescribed in Paragraph "13" hereof at least twenty-four hours prior to the effective date of termination specified in such notice.

It is further agreed:

RENT

1. Lessee shall pay to Lessor as rent for the premises and property leased hereunder the following sums per month:

January	$.....	May	$.....	September	$.....
February	$.....	June	$.....	October	$.....
March	$.....	July	$.....	November	$.....
April	$.....	August	$.....	December	$.....

All such rentals shall be payable monthly in advance on the first day of the calendar month. Rent for any fractional part of a month shall be duly prorated on the basis of the rent for said month as herein specified. In addition to the aforesaid rental, Lessee shall pay to Lessor as rental for each month of the effective term hereof a sum computed by multiplying the total number of gallons of gasoline in excess of the number of gallons set forth below, received by Lessee on the demised premises during the month for which payment is being made, for resale and distribution therefrom, by the rates following, to-wit:

For the month of January	¢ per gallon of gasoline in excess of	gallons
For the month of February	¢ per gallon of gasoline in excess of	gallons
For the month of March	¢ per gallon of gasoline in excess of	gallons
For the month of April	¢ per gallon of gasoline in excess of	gallons
For the month of May	¢ per gallon of gasoline in excess of	gallons
For the month of June	¢ per gallon of gasoline in excess of	gallons
For the month of July	¢ per gallon of gasoline in excess of	gallons
For the month of August	¢ per gallon of gasoline in excess of	gallons
For the month of September	¢ per gallon of gasoline in excess of	gallons
For the month of October	¢ per gallon of gasoline in excess of	gallons
For the month of November	¢ per gallon of gasoline in excess of	gallons
For the month of December	¢ per gallon of gasoline in excess of	gallons

said payments to be made on or before the tenth day of the next succeeding calendar month. In case of fractional monthly periods the number of gallons shown in the last column above will be duly prorated and the gallonage rental will be paid on the gallons of gasoline delivered in excess of such prorated amount.

USE

2. The improvements, buildings and facilities erected and located on the demised premises are designed for the operation of a gasoline service station thereon, and Lessee shall use the demised premises and property primarily for such purpose; and in no event shall said premises be used for any unlawful or offensive purpose, nor shall Lessee commit any nuisance thereon. In the event the sale of gasoline or other petroleum products upon the demised premises or the operation of a gasoline service station thereon is prevented by law or the whole, or such part of the demised premises as will render the balance thereof unsatisfactory for the operation of a gasoline service station thereon, is taken for public use, this lease shall forthwith terminate.

MAINTENANCE

3. Lessee shall, during the term hereof, maintain the demised premises, improvements, buildings, trees, shrubs, lawns, fixtures and equipment in good order and repair and in a clean and safe condition. In the event of Lessee's failure so to do, Lessor may enter upon the demised premises and make the necessary repairs for the account of Lessee and/or may terminate this lease. Lessee shall make no material change or alteration in the demised premises, improvements, buildings, fixtures and equipment except such as may be necessary to enable Lessee to continue business on said premises, unless the consent in writing of Lessor be first obtained.

DELIVERY

4. Upon the expiration or sooner termination of this agreement, Lessee shall yield up and return to Lessor the demised premises, improvements, buildings, fixtures and equipment in as good condition as when received by Lessee, damage and depreciation due to ordinary wear and use excepted; and shall pay Lessor the cost of restoring the premises, improvements, buildings, fixtures and equipment to the condition in which they were at the time when received by Lessee, damage and depreciation due to ordinary wear and use excepted, together with the value of any equipment lost or damaged beyond repair.

CT OF GOD

5. Should any of the improvements on the demised premises be destroyed by act of God, fire, explosion, the elements or any cause not due to the negligence, neglect or willful act of Lessee and be thereby rendered unsatisfactory for the conduct of Lessee's business thereon, Lessor shall be privileged to terminate this lease or repair the premises in which event rent payable by Lessee hereunder shall be abated for the time and to the extent that he is prevented from using the premises or any part thereof.

TILITIES

6. During the occupancy of the demised premises, Lessee shall pay all charges accruing for gas, water, electricity, telephone and other public utilities, and shall not permit any liens to attach to the demised premises. Upon failure of Lessee in this respect, Lessor may, but shall not be obliged to, pay such charges and lien obligations, and add the same to the rental payable hereunder.

EFAULT

7. Should Lessee at any time fail to faithfully and diligently comply with the terms, conditions and covenants of this lease on his part to be performed, or should Lessee abandon or vacate the demised premises, or should Lessee default in payment of rent at the time due, or should bankruptcy or insolvency proceedings under the bankruptcy laws of the United States or any state be instituted by or against Lessee, or should any attachment, garnishment, execution or any other legal proceeding be levied or instituted by anyone other than Lessor against the premises or any of the equipment thereon in any action in which Lessee is named as defendant, or should Lessee attempt to sell, assign, pledge or mortgage the said premises or any part thereof, or allow any lien to attach thereto, or should Lessee enter into a composition for the benefit of creditors, Lessor may, without notice, immediately terminate this lease and reenter and resume possession of the premises, improvements, buildings, fixtures and equipment.

AIVER

8. The waiver of any breach hereunder shall not be deemed a continuing waiver or a waiver of any subsequent breach, whether of the same or a different provision of this agreement.

SSIGNMENT

9. This lease shall not be assignable, voluntarily or by operation of law, nor shall Lessee sublet any part of the demised premises without the written consent of Lessor first having been obtained.

DEMNITY

10. Lessee agrees to indemnify and hold Lessor free and harmless from any and all claims for damage to property or injury to or death of person or persons occuring upon the demised premises or arising out of any of the operations of Lessee, his agents or employees, thereon, or thereabout during the term hereof.

ION LEASES

11. Although this instrument is designated as a lease, it is nevertheless understood that it is in fact a sublease and is subordinate and subject to all terms, provisions and conditions contained in that certain lease dated the ..... day of ....., 19....., by and between ....., as lessor, and ....., as lessee (to whose interest Lessor herein has succeeded). The relinquishment, expiration or sooner termination of said lease shall of itself result in the termination of this lease without notice and without liability on the part of Lessor herein, and Lessor shall be privileged to terminate this lease forthwith by notice at a time not exceeding 10 days prior to the termination, relinquishment, or expiration of the above lease so as to permit Lessor to remove its property from the demised premises. Lessor herein shall be privileged to amend, modify or extend the above described lease without notice to Lessee herein in which event this lease shall become subject to the terms, provisions and conditions of said lease as modified, amended or extended. Lessor makes no warranty that the aforesaid lease will not by its terms expire, or is not subject to termination prior to the earliest termination date herein provided.

TTORNEY'S FEES

12. In the event Lessor shall employ an attorney or attorneys in connection with the pursuit of any of Lessor's rights, powers or privileges hereunder, Lessee shall pay, in addition to all other sums hereunder, a reasonable attorney's fee.

OTICES

13. Any demands or notices required or permitted to be served hereunder shall be deemed properly served when deposited, postage prepaid, registered, in the United States mail, addressed to Lessee at the address of the demised premises, or to Lessee at 555 South Flower Street, Los Angeles 13, California. In lieu of mailing, as aforesaid, such demands and notices may be personally served upon Lessee.

OTHER GREEMENTS

14. From the effective date of commencement hereof, this lease terminates and supersedes any lease or other agreement between Lessee and Lessor, or the predecessors of Lessor, under the terms of which Lessee was privileged to occupy the demised premises.

EXECUTION

15. This agreement shall not be binding upon Lessor until executed by a duly authorized officer or agent of Lessor and a fully executed copy hereof delivered to Lessee. It is agreed that the execution hereof has not been induced by any representation, warranty or agreement other than those herein expressed; and the terms hereof shall not be amended or varied except by a subsequent written instrument executed by the parties.

IN WITNESS WHEREOF, the parties have executed these premises as of the date hereinabove written.

RICHFIELD OIL CORPORATION

By .....
LESSOR

.....
LESSEE

.....
MAILING ADDRESS OF LESSEE

Government Exhibit 1-F

FORM 542-F [illegible]

This rider is to be attached to that certain Service Station Lease, Form 542, made and entered into the day of , 194 , between Richfield Oil Corporation, as "Lessor," and as "Lessee," by which was leased the service station premises commonly known as in the City of , County of , State of

It is agreed that irrespective of anything to the contrary contained in said Lease, rental payable thereunder commencing the day of , 194 , shall be $ per month and no more.

Executed this day of , 194

RICHFIELD OIL CORPORATION

By.....
LESSOR

.....
LESSEE

Government Exhibit 1-G

RICHFIELD OIL CORPORATION
SERVICE STATION LEASE

THIS LEASE made and entered into this.....day of....., 19....., by and between RICHFIELD OIL CORPORATION, hereinafter referred to as "Lessor", and....., hereinafter referred to as "Lessee",

WITNESSETH:

DESCRIPTION OF PROPERTY

That in consideration of the payment of the rents and the performance of the covenants and agreements herein set forth to be kept and performed on the part of Lessee, Lessor does hereby lease to Lessee that certain real property situated in the City of....., County of....., State of....., together with all appurtenances thereunto belonging and with all improvements, buildings, fixtures, equipment and facilities situated thereon, all as are fully described in Schedule "A" hereof.

TERM

TO HAVE AND TO HOLD unto Lessee for the period commencing....., 19....., and continuing until terminated by either party by means of a written notice of election to terminate served on the other party in the manner prescribed in Paragraph "18" hereof at least twenty-four hours prior to the effective date of termination specified in such notice.

It is further agreed:

RENT

1. Lessee shall pay to Lessor as rent for the premises and property leased hereunder the following sums per month:

January	$.....	May	$.....	September	$.....
February	$.....	June	$.....	October	$.....
March	$.....	July	$.....	November	$.....
April	$.....	August	$.....	December	$.....

All such rentals shall be payable monthly in advance on the first day of the calendar month. Rent for any fractional part of a month shall be duly prorated on the basis of the rent for said month as herein specified. In addition to the aforesaid rental, Lessee shall pay to Lessor as rental for each month of the effective term hereof a sum computed by multiplying the total number of gallons of gasoline in excess of the number of gallons set forth below, received by Lessee on the demised premises during the month for which payment is being made, for resale and distribution therefrom, by the rates following, to-wit:

For the month of January.....¢ per gallon of gasoline in excess of.....gallons
For the month of February.....¢ per gallon of gasoline in excess of.....gallons
For the month of March.....¢ per gallon of gasoline in excess of.....gallons
For the month of April.....¢ per gallon of gasoline in excess of.....gallons
For the month of May.....¢ per gallon of gasoline in excess of.....gallons
For the month of June.....¢ per gallon of gasoline in excess of.....gallons
For the month of July.....¢ per gallon of gasoline in excess of.....gallons
For the month of August.....¢ per gallon of gasoline in excess of.....gallons
For the month of September.....¢ per gallon of gasoline in excess of.....gallons
For the month of October.....¢ per gallon of gasoline in excess of.....gallons
For the month of November.....¢ per gallon of gasoline in excess of.....gallons
For the month of December.....¢ per gallon of gasoline in excess of.....gallons

said payments to be made on or before the tenth day of the next succeeding calendar month. In case of fractional monthly periods the number of gallons shown in the last column above will be duly prorated and the gallonage rental will be paid on the gallons of gasoline delivered in excess of such prorated amount.

USE

2. The improvements, buildings and facilities erected and located on the demised premises are designed for the operation of a gasoline service station thereon, and Lessee shall use the demised premises and property primarily for such purpose; and in no event shall said premises be used for any unlawful or offensive purpose, nor shall Lessee commit any nuisance thereon. In the event the sale of gasoline or other petroleum products upon the demised premises or the operation of a gasoline service station thereon is prevented by law or the whole, or such part of the demised premises as will render the balance thereof unsatisfactory for the operation of a gasoline service station thereon, is taken for public use, this lease shall forthwith terminate.

MAINTENANCE

3. Lessee shall, during the term hereof, maintain the demised premises, improvements, buildings, trees, shrubs, lawns, fixtures and equipment in good order and repair and in a clean and safe condition. In the event of Lessee's failure so to do, Lessor may enter upon the demised premises and make the necessary repairs for the account of Lessee and/or may terminate this lease. Lessee shall make no material change or alteration in the demised premises, improvements, buildings, fixtures and equipment except such as may be necessary to enable Lessee to continue business on said premises, unless the consent in writing of Lessor be first obtained.

REDELIVERY

4. Upon the expiration or sooner termination of this agreement, Lessee shall yield up and return to Lessor the demised premises, improvements, buildings, fixtures and equipment in as good condition as when received by Lessee, damage and deprecriation due to ordinary wear and use excepted; and shall pay Lessor the cost of restoring the premises, improvements, buildings, fixtures and equipment to the condition in which they were at the time when received by Lessee, damage and depreciation due to ordinary wear and use excepted, together with the value of any equipment lost or damaged beyond repair. Lessor shall not be liable to Lessee for any property left by Lessee in or on the demised premises.

ACT OF GOD

5. Should a substantial part of the improvements on the demised premises be destroyed by act of God, fire, explosion, the elements or any cause not due to the negligence, neglect or willful act of Lessee and be thereby rendered unsatisfactory for the conduct of Lessee's business thereon, Lessee shall be privileged to terminate this lease or repair the premises in which event rent payable by Lessee hereunder shall be abated for the time and to the extent that he is prevented from using the premises or any part thereof.

UTILITIES

6. During the occupancy of the demised premises, Lessee shall pay all charges accruing for gas, water, electricity, telephone and other public utilities, and shall not permit any liens to attach to the demised premises. Upon failure of Lessee in this respect, Lessor may, but shall not be obliged to, pay such charges and lien obligations, and add the same to the rental payable hereunder.

DEFAULT

7. Should Lessee at any time fail to faithfully and diligently comply with the terms, conditions and covenants of this lease on his part to be performed, or should Lessee abandon or vacate the demised premises, or should Lessee default in payment of rent at the time due, or should bankruptcy or insolvency proceedings under the bankruptcy laws of the United States or any state be instituted by or against Lessee, or should any attachment, garnishment, execution or any other legal proceeding be levied or instituted by anyone other than Lessor against the premises or any of the equipment thereon in any action in which Lessee is named as defendant, or should Lessee attempt to sell, assign, pledge or mortgage the said premises or any part thereof, or allow any lien to attach thereto, or should Lessee enter into a composition for the benefit of creditors, Lessor may, without notice, immediately terminate this lease and re-enter and resume possession of the premises, improvements, buildings, fixtures and equipment.

WAIVER

8. The waiver of any breach hereunder shall not be deemed a continuing waiver or a waiver of any subsequent breach, whether of the same or a different provision of this agreement.

ASSIGNMENT

9. This lease shall not be assignable, voluntarily or by operation of law, nor shall Lessee sublet any part of the demised premises without the written consent of Lessor first having been obtained.

INDEMNITY

10. Lessee agrees to indemnify and hold Lessor free and harmless from any and all claims for damage to property or injury to or death of person or persons occuring upon the demised premises or arising out of any of the operations of Lessee, his agents or employees, thereon, or thereabout during the term hereof.

PRIOR LEASES

11. Although this instrument is designated as a lease, it is nevertheless understood that it is in fact a sublease and is subordinate and subject to all terms, provisions and conditions contained in that certain lease dated the.....day of....., 19....., by and between _____, as lessor, and _____, as lessee (in whose interest Lessor herein has succeeded). The relinquishment, expiration or sooner termination of said lease shall of itself result in the termination of this lease without notice and without liability on the part of Lessor herein, and Lessor shall be privileged to terminate this lease forthwith by notice at a time not exceeding 10 days prior to the termination, relinquishment, or expiration of the above lease so as to permit Lessee to remove its property from the demised premises. Lessor herein shall be privileged to amend, modify or extend the above described lease without notice to Lessee herein in which event this lease shall become subject to the terms, provisions and conditions of said lease as modified, amended or extended. Lessor makes no warranty that the aforesaid lease will not by its terms expire, or is not subject to termination prior to the earliest termination date herein provided.

ATTORNEY'S FEES

12. In the event Lessor shall employ an attorney or attorneys in connection with the pursuit of any of Lessor's rights, powers or privileges hereunder, Lessee shall pay, in addition to all other sums hereunder, a reasonable attorney's fee.

NOTICES

13. Any demands or notices required or permitted to be served hereunder shall be deemed properly served when deposited, postage prepaid, registered, in the United States mail, addressed to Lessee at the address of the demised premises, or at the address hereinafter provided, or to Lessor at 555 South Flower Street, Los Angeles 13, California. In lieu of mailing, as aforesaid, such demands and notices may be personally served upon Lessee.

OTHER AGREEMENTS

14. From the effective date of commencement hereof, this lease terminates and supersedes any lease or other agreement between Lessee and Lessor, or the predecessors of Lessor, under the terms of which Lessee was privileged to occupy the demised premises or any portion thereof or any larger premises of which the premises demised hereby are a part.

EXECUTION

15. This agreement shall not be binding upon Lessor until executed by a duly authorized officer or agent of Lessor and a fully executed copy hereof delivered to Lessee. It is agreed that the execution hereof has not been induced by any representation, warranty or agreement other than those herein expressed; and the terms hereof shall not be amended or varied except by a subsequent written instrument executed by the parties.

IN WITNESS WHEREOF, the parties have executed this lease as of the date first hereinabove written.

RICHFIELD OIL CORPORATION

By.....
LESSOR

.....
LESSEE

.....
MAILING ADDRESS OF LESSEE

Government Exhibit 2

RICHFIELD OIL CORPORATION
TRUCK SERVICE STATION LEASE

THIS LEASE made and entered into this 1st day of December, 19 48,

by and between RICHFIELD OIL CORPORATION, hereinafter referred to as "Lessor", and

CHARLES E. RONNOW, hereinafter referred to as "Lessee".

WITNESSETH:

DESCRIPTION OF PROPERTY

That in consideration of the payment of rents and the performance of the covenants and agreements hereinafter set forth to be kept and performed on the part of Lessee, Lessor does hereby lease to Lessee that certain real property situated in the City of Las Vegas, County of Clark, State of Nevada, together with all appurtenances thereunto belonging and with all improvements, buildings, fixtures, equipment and facilities situated thereon, all as are fully described in Exhibit "A" hereof.

TERM

C.E.R. INITIALS

TO HAVE AND TO HOLD for the period commencing as of the 1st day of December, 19 48, and extending to the 30th day of November, 1953, subject, however, to termination on the part of Lessor at any time during the term hereof by means of a notice in writing served upon Lessee in the manner prescribed in Paragraph 13 hereof at least five (5) days prior to the effective date of termination specified in said notice.

IT IS FURTHER AGREED:

RENT

1. Lessee shall pay to Lessor as rent for the premises and property leased hereunder the sum of $703.00 per month, said rentals to be payable monthly in advance on the first day of each calendar month during the effective term hereof. Rentals for fractional monthly periods shall be prorated. Irrespective of anything to the contrary herein contained it is agreed that rental payable hereunder during the first two months of the term hereof shall be the amounts set forth below and no more.

December 1948 . . . . . $703.00 January 1949 . . . . . $703.00

C.E.R.

Effective as of the date of commencement of the term hereof this lease supersedes and terminates that certain Truck Service Station Lease made and entered

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TRUCK SERVICE STATION LEASE

THIS LEASE made and entered into this 1st day of December, 19 42,

by and between RICHFIELD OIL CORPORATION, hereinafter referred to as "Lessor", and

CHARLES E. RONNOW hereinafter referred to as "Lessee".

WITNESSETH:

DESCRIPTION OF PROPERTY

That in consideration of the payment of rents and the performance of the covenants and agreements hereinafter set forth to be kept and performed on the part of Lessee, Lessor does hereby lease to Lessee that certain real property situated in the City of Las Vegas, County of Clark, State of Nevada, together with all appurtenances thereunto belonging and with all improvements, buildings, fixtures, equipment and facilities situated thereon, all as are fully described in Exhibit "A" hereof.

TERM

TO HAVE AND TO HOLD for the period commencing as of the 1st day of December, 19 42, and extending to the 30th day of November, 1953, subject, however, to termination on the part of Lessor at any time during the term hereof by means of a notice in writing served upon Lessee in the manner prescribed in Paragraph 13 hereof at least five (5) days prior to the effective date of termination specified in said notice.

IT IS FURTHER AGREED:

RENT

1. Lessee shall pay to Lessor as rent for the premises and property leased hereunder the sum of $703.00 per month, said rentals to be payable monthly in advance on the first day of each calendar month during the effective term hereof. Rentals for fractional monthly periods shall be prorated. Irrespective of anything to the contrary herein contained it is agreed that rental payable hereunder during the first two months of the term hereof shall be the amounts set forth below and no more.

December 1942 . . . . . $703.00 January 1943 . . . . . $703.00

Effective as of the date of commencement of the term hereof this lease supersedes and terminates that certain Truck Service Station Lease made and entered into the 4th day of January, 1946, by and between the parties hereto, by which Lessor leased a portion of the premises demised hereby for the period commencing as of the 1st day of February, 1946, and extending to the 31st day of January, 1951, unless sooner terminated as therein provided.

USE

2. The improvements, buildings and facilities erected and located on the demised premises are primarily designed and shall be used for the operation of a gasoline truck service station. In no event shall said premises be used for any unlawful or offensive purpose, nor shall Lessee commit any nuisance thereon. In the event the sale of gasoline or other petroleum products upon the demised premises or the operation of a truck service station thereon is prevented by law or the whole, or such part of the demised premises as will render the balance thereof unsatisfactory for the operation of a truck service station thereon is taken for public use, this Lease shall forthwith terminate.

MAINTENANCE

3. Lessee shall, during the term hereof, maintain the demised premises, improvements, buildings, parkways and driveways, fixtures and equipment in good order and repair and in a clean and safe condition. In the event of Lessee's failure so to do, Lessor may enter upon the demised premises and make the necessary repairs for the account of Lessee and/or may terminate this Lease. Lessee shall make no material change or alteration in the demised premises, improvements, buildings, fixtures and equipment except such as may be necessary to enable Lessee to continue business on said premises, unless the consent in writing of the Lessor be first obtained.

REDELIVERY

4. Upon the expiration or sooner termination of this agreement, Lessee shall yield up and return to Lessor the demised premises, improvements, buildings, fixtures and equipment in as good condition as when received by Lessee, damage and depreciation due to ordinary wear and use excepted; and shall pay Lessor the cost of restoring the premises, improvements, buildings, fixtures and equipment to the condition in which they were at the time when received by Lessee, damage and depreciation due to ordinary wear and use excepted, together with the value of any equipment lost or damaged beyond repair.

ACT OF GOD

5. Should a substantial part of the improvements on the demised premises be destroyed by act of God, fire, explosion, the elements or any cause not due to the negligence, neglect or willful act of Lessee and be thereby rendered unsatisfactory for the conduct of Lessee's business thereon, Lessor shall be privileged to terminate this Lease or repair the premises in which event rent payable by Lessee hereunder shall be abated for the time and to the extent that he is prevented from using the premises or any part thereof.

UTILITIES

6. During the occupancy of the demised premises, Lessee shall pay all charges accruing for gas, water, electricity, telephone and other public utilities, and shall not permit any liens to attach to the demised premises. Upon failure of Lessee in this respect, Lessor may, but shall not be obliged to, pay such charges and lien obligations, and add the same to the rental payable hereunder.

DEFAULT

7. Should Lessee at any time fail to faithfully and diligently comply with the terms, conditions and covenants of this Lease on his part to be performed, or should Lessee abandon or vacate the demised premises, or should Lessee default in payment of rent at the time due, or should bankruptcy or insolvency proceedings under the bankruptcy laws of the United States or any state be instituted by or against Lessee, or should any attachment, garnishment, execution or any other legal proceeding be levied or instituted by anyone other than Lessor against the premises or any of the equipment thereon in any action in which Lessee is named as defendant, or should Lessee attempt to sell, assign, pledge or mortgage the said premises or any part thereof, or allow any lien to attach thereto, or should Lessee enter into a composition for the benefit of creditors, Lessor may, without notice, immediately terminate this lease and re-enter and resume possession of the premises, improvements, building, fixtures and equipment.

WAIVER

8. The waiver of any breach hereunder shall not be deemed a continuing waiver or a waiver of any subsequent breach, whether of the same or a different provision of this agreement.

POOR COPY

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ASSIGNMENT 9. This lease shall not be assignable, voluntarily or by operation of law, nor shall Lessee sublet any part of the demised premises without the written consent of Lessor first having been obtained.

INDEMNITY 10. Lessee agrees to indemnify and hold Lessor free and harmless from any and all claims for damage to property or injury to or death of person or persons occurring upon the demised premises or arising out of any of the operations of Lessee, his agents or employees, thereon, or thereabout during the term hereof.

PRIOR LEASES 11. Although this instrument is designated as a lease, it is nevertheless understood that it is in fact a sublease and is subordinate and subject to all terms, provisions and conditions contained in that certain lease dated the 25th day of September, 19 44, by and between Richard H. Clough and Edith Clough, his wife, as lessor, and Richfield Oil Corporation, as lessee (this [redacted]). The relinquishment, expiration or sooner termination of said lease shall of itself result in the termination of this lease without notice and without liability on the part of Lessor hereto.

ATTORNEY'S FEES 12. In the event Lessee shall employ an attorney or attorneys in connection with the pursuit of any of Lessee's rights, powers or privileges hereunder, Lessee shall pay, in addition to all other sums hereunder, a reasonable attorney's fee.

NOTICES 13. Any demands or notices required or permitted to be served hereunder shall be deemed properly served when deposited, postage prepaid, registered, in the United States mail, addressed to Lessee at the address of the demised premises or to Lessee at 919 South Flower Street, Los Angeles 13, California. In lieu of mailing, as aforesaid, such demands and notices may be personally served upon Lessee.

EXECUTION 14. This agreement shall not be binding upon Lessor until executed by a duly authorized officer or agent of Lessor and a fully executed copy hereof delivered to Lessee. It is agreed that the execution hereof has not been induced by any representation, warranty or agreement other than those herein expressed, and the terms hereof shall not be amended or varied except by a subsequent written instrument executed by the parties.

IN WITNESS WHEREOF, the parties have executed these presents as of the date hereinabove written.

Charles E. Ronnow
Lessee

629 So. Main Street,
Las Vegas, Nevada
Mailing Address of Lessee

RICHFIELD OIL CORPORATION

By _____
Lessee

EXHIBIT A

DESCRIPTION OF LEASED REAL PROPERTY

Lots 4 to 8 inclusive, and Lots 9 to 16 inclusive, in Block 9 of Clark's Las Vegas Townsite, as shown by map thereof on file in Book 1 of Platts, page 37, in the office of the County Recorder of Clark County, Nevada.

1 - 20 x 30 concrete block sales building w/28" wooden cabinets and 4 2 tube fluorescent fixtures and tubes.
1 - 20 x 30 concrete block building, drivers' rest and 2 rest rooms w/4 wash basin lavatories, 3 stools, 2 windows, glass block partitions and tile on floor and walls and 2 shower heads and 3 mirrors.
7 - electrolier poles
7 - double arms for poles
20 - Benjamin floodlights w/1000 watt bulbs
2 - I Boards
1 - Grease pit complete w/sump, lights, oil lines, and sump pump, Pemberthy 1/4 H.P. Motor, 120V #117825
1 - Air Cooker 2500 cubic feet
1 - Hot water tank, 60 gallon
1 - Hawes Drinking Fountain
4 - 10,000 gallon underground tanks
1 - 550 gallon underground oil drain tank
16 - fill box covers
8 - extractor valve units
4 - padlocks
Electric, air and gasoline line systems
Grease piping to pit
Oil Piping to island hose reels
2 - air and water hoses reels w/hose
2 - air hose reels w/hose
1 - cash box without stand
1 - Richfield sign 3 x 35, metal
1 - air and water stand w/valves
1 - electric panel board at alley w/1 - 220 switch and 1 - 110 switch
1 - electric system w/light bulbs and fixtures complete

(continued on next page)

Government Exhibit 3

Service Station Lease

2-B

IN CONSIDERATION of the payment of rent and of the covenants of the parties,

"LESSOR," hereby lets and leases to Richfield Oil Corporation, "LESSEE," and Lessee takes and rents from Lessor the real property situated in the City of....., County of....., State of....., particularly described as follows:

together with all appurtenances thereunto belonging, and together, also, with the personal property described in the inventory which is hereto attached marked "Exhibit A" and is by this reference incorporated herein as if here set forth at length, for the term commencing....., 19....., and ending....., 19....., provided, however, that this lease may be terminated by the parties as herein provided.

1. In consideration of the letting and leasing by Lessor and of the covenants of the parties, Lessee agrees:

(a) To pay as rent for said real and personal property on the day of each month during which this lease remains in effect the sum of .....

(b) To keep the property hereinabove described in good condition and repair during the term hereof at Lessee's sole expense, except that Lessee shall not be liable for, or be obligated to repair, damage caused by reasonable wear and use thereof, or by fire, or by any other causes beyond its control;

(c) To pay for all water, electricity and gas used on the demised premises during the said term;

(d) Not to allow the encumbrance of the said premises by any liens occasioned by Lessee's use thereof hereunder.

2. In consideration of the payment of rent by Lessee and of the covenants of the parties, Lessor agrees:

(a) Immediately to repair at Lessor's sole cost any damage the result of fire and/or any cause not the fault of Lessee, and to abate the rent payable hereunder for such time and proportionately to the extent that Lessee is deprived of the use of the real or personal property hereunder demised or leased or any part thereof;

(b) At Lessor's sole expense to make any changes or alterations in the real and personal property hereby leased that may be required by law to permit the use thereof for the operation of a gasoline service station, and in the event that any part of the premises hereby demised is taken for public use and the residue remains suitable for maintaining a gasoline service station thereon, at Lessor's sole expense to put all the leased property in order for the conduct of Lessee's business after such taking, and to abate the rent payable hereur ler for such time and to such extent as Lessee is prevented from using the said leased property or any part hereof;

(c) In the event Lessor during the term hereof receives a bona fide offer to purchase the property hereunder leased, or any part thereof, to notify Lessee in writing and to allow Lessee for ten (10) days thereafter the exclusive right to purchase the said property in accordance with the terms of the said offer; it is understood, however, that the failure of Lessee to exercise such option shall in no way affect its rights under this lease, this lease remaining in full force and effect and any sale of the property hereby leased being subject to the rights of Lessee hereunder;

(d) Not to conduct within two hundred (200) yards of the premises hereby demised, or permit to be conducted in premises controlled by Lessor, any business venture from which petroleum products other than those of Lessee are sold or distributed;

(e) Lessor warrants that the title to the premises and the personal property hereby leased is vested in Lessor free and clear of all liens, clouds and encumbrances, except .....

and current taxes not delinquent and that there are no municipal or other governmental restrictions, leases or other agreements with respect to said property that would affect the use of all or any part thereof for a gasoline service station.

3. Lessor shall pay all taxes and insurance with respect to all the property leased. Lessee may, but without any obligation so to do, pay delinquent taxes and other sums that may be necessary to protect the leasehold hereby created, and may thereafter deduct all sums so paid, together with interest thereon at six (6%) per cent per annum from date of payment and proportionately for any part thereof, from the rent payable hereunder.

4. Lessee shall be privileged to paint all or any part of the property hereunder leased, so long as said property is not thereby unreasonably damaged, and Lessee may place additional improvements, fixtures and/or equipment upon the premises hereby demised, which improvements, fixtures and, or equipment it shall have the right to remove at any time during the term hereof and also within thirty (30) days after the expiration or any other termination of this lease, or of any extension hereof, even though such termination is the result of Lessee's own default.

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5. In the event that the sale of gasoline or other petroleum products upon the premises hereinabove described, or the construction, operation or maintenance of any of the improvements, equipment or facilities located thereon or necessary to the maintenance of a gasoline service station thereon is prevented by law; or in the event that the whole or any part of the said premises is taken for public use; or in the event that the vacating of any street or highway upon which the said premises front shall interfere with the convenient use thereof for the purpose of operating a gasoline filling station; or in the event that by reason of other cause or causes beyond the control of Lessee, Lessee is unable lawfully and peacefully to conduct, or to have conducted, a gasoline filling station business upon the said premises, then in any of such events just hereinabove set forth, at the option of Lessee, this lease may be terminated and the leasehold estate surrendered immediately at Lessee's option; and it is agreed that in the event of any such termination and surrender, rent otherwise payable by the terms hereof shall immediately cease.

6. Lessor hereby grants to Lessee the following prior and exclusive options:

(a) To extend this lease for a period of ..... years upon all of the terms herein set forth. In the event of the exercise of this option by Lessee, Lessee shall give to Lessor a written notice of its election to exercise such option at least thirty (30) days prior to the expiration of this lease.

(b) To purchase the premises and personal property hereby demised and leased at any time prior to the expiration date of this lease or any extension hereof for the sum of ..... ($.....) Dollars.

7. Upon failure of Lessee to perform any of the covenants herein required of it, Lessor shall notify Lessee of such default in writing by notice directed to it at 555 South Flower Street, Los Angeles, California, or such other address as Lessee may designate, and in the event, but only in the event, that Lessee fails to remedy such default within ten (10) days after receipt of such notice, Lessor shall have the right to re-enter the premises hereinabove described and to terminate this lease or to avail itself of any other remedy provided by law.

8. Any notice required or permitted hereunder to be served upon Lessor shall be deemed properly served when such notice is directed to it at..... and deposited, postage prepaid, in the United States mail.

9. All the terms, covenants and conditions hereof shall be binding upon and shall inure to the benefit of the heirs, administrators, successors and/or assigns of Lessor, and the successors and assigns of Lessee.

10. It is understood that regulations or enactments of federal, state, county or municipal authorities may make necessary certain modifications of the provisions of this lease. Lessor agrees at the time of any such regulations or enactments become effective, to execute with Lessee such modification hereof proposed by Lessee as may be necessary to permit compliance by both parties hereto with the provisions thereof.

11. In the event there shall at any time during the term of this lease be imposed, levied or assessed by the state, county or municipality in which the premises hereunder leased are situated, any tax, assessment or other charge which would require the payment by Lessee to any such governmental instrumentality of a sum in excess of $25.00 per annum by reason of Lessee's interest in or control over or operation of the premises hereunder leased, or of the business conducted thereon, (there being taken into account, in determining the amount of tax required to be paid by Lessee by reason of its control of said premises, all other locations controlled by Lessee in the entire political subdivision by which such tax is levied). Lessee shall at all times thereafter have the privilege and power of terminating this lease at any time by means of a thirty day notice in writing to Lessor of Lessee's election to terminate.

12. The terms and provisions hereof shall not be binding upon either party hereto until this instrument has been duly executed in writing by both parties and delivered by Lessee. No performance by either party hereto of the provisions of this instrument shall be deemed to be execution thereof, and such performance shall not create any obligation with respect to future performance hereof, provided, however, that any performance hereof prior to complete execution and delivery, as aforesaid, shall be upon the terms and conditions herein contained.

IN WITNESS WHEREOF, the parties hereto have executed this instrument this.....day of ....., 19.....

.....

.....

Lessor.

RICHFIELD OIL CORPORATION

BY.....

Lessee.

Government Exhibit 3-A

SUBLEASE

THIS LEASE executed this____day of_____, 19____, between RICHFIELD OIL CORPORATION, herein called "Lessor", and_____, herein called "Lessee",

WITNESSETH:

That in consideration of the payment by Lessee of the rent herein specified and of the mutual covenants herein contained, Lessor hereby demises and leases unto Lessee and Lessee takes and rents from Lessor those certain premises in the City of_____, County of_____, State of_____ described as follows:

together with all appurtenances thereunto belonging, and together also with the personal property described in the inventory which is hereto attached, marked Exhibit "A", and by this reference incorporated herein as if herein set forth at length.

TO HAVE AND TO HOLD unto Lessee for the term commencing the____day of_____, 19____, and ending the____day of_____, 19____, unless this lease shall be sooner terminated in a manner herein provided.

The following shall constitute the covenants of this lease, and the parties hereto agree as follows:

1. Lessee shall pay to Lessor as rent for said real and personal property, on the____day of each month during which this lease remains in effect, the sum of_____

2. The improvements, buildings and facilities erected and located on the demised premises are designed for the operation of a gasoline service station thereon, and Lessee shall use the demised premises and property primarily for such purpose; and in no event shall said premises be used for any unlawful or offensive purpose, nor shall Lessee commit any nuisance thereon. In the event the sale of gasoline or other petroleum products upon the demised premises or the operation of a gasoline service station thereon is prevented by law or the whole, or such part of the demised premises as will render the balance thereof unsatisfactory for the operation of a gasoline service station thereon, is taken for public use, this lease shall forthwith terminate.

3. Lessee shall, during the term hereof, maintain the demised premises, improvements, buildings, fixtures and equipment in good order and repair and in a clean and safe condition at Lessee's cost and expense. In the event of Lessee's failure so to do, Lessor may enter upon the demised premises and make necessary repairs for the account of Lessee and/or may terminate this lease. Lessee shall make no change, alteration or substitution in the demised premises, improvements, buildings, fixtures and equipment except such as may be necessary to enable Lessee to continue business on said premises, unless the consent in writing of Lessor be first obtained.

4. Upon the expiration or sooner termination of this agreement, Lessee shall yield up and return to Lessor the demised premises, improvements, buildings, fixtures and equipment in as good condition as when received by Lessee, damage and depreciation due to ordinary wear and use excepted; and shall pay Lessor the cost of restoring the premises, improvements, buildings, fixtures and equipment to the condition in which they were at the time when received by Lessee, damage and depreciation due to ordinary wear and use excepted, together with the value of any equipment lost or damaged beyond repair.

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5. Should any of the improvements on the demised premises be destroyed Act of God, fire, explosion, the elements or any cause not due to the negligence, neglect, or willful act of Lessee and be thereby rendered uninhabitable for the conduct of Lessee's business thereon, Lessor shall be privileged to terminate this lease or repair the premises, in which event rent payable by Lessee hereunder shall be abated for the time and to the extent that he is prevented from using the premises or any part thereof.

6. During the occupancy of the demised premises, Lessee shall pay all charges accruing for gas, water, electricity, telephone and other public utilities, and shall not permit any liens to attach to the demised premises. Lessee shall also pay the total amount of all taxes and assessments levied or imposed against all property of Lessee located on the premises. Upon failure of Lessee in this respect, Lessor may, but shall not be obligated to, pay such taxes and/or charges, and add the same to the rental payable hereunder.

7. In the event Lessee shall at any time during the term hereof be in default in respect to the payment of rent herein provided or in respect to the performance of any other of the provisions hereof, or should Lessee abandon or vacate the demised premises, Lessor shall be privileged, at its option, to resume possession of the demised premises, with or without process of law; thereupon, at Lessor's option, this lease and all of the rights of Lessee hereunder shall forthwith terminate. In the event of such re-entry by Lessor, Lessor shall be privileged to possess and to hold all property of Lessee which may be situated on the demised premises as a pledge to secure payment by Lessee of any sum or sums which may be due or owing to Lessor by Lessee on any account or accounts whatever. The foregoing remedies shall be in addition to those now or hereafter provided by law.

8. The waiver of any breach hereunder shall not be deemed a continuing waiver or a waiver of any subsequent breach, whether of the same or a different provision of this agreement.

9. This lease shall not be assignable, voluntarily or by operation of law, nor shall Lessee sub-let any part of the demised premises without the written consent of Lessor first having been obtained. This lease shall not become an asset of the estate of Lessee but shall terminate on his death.

10. Lessee agrees to indemnify and hold Lessor free and harmless from any and all claims for damage to property or injury to or death of person or persons occurring upon the demised premises or arising out of any of the operations of Lessee, his agents or employees, thereon or thereabout during the term hereof.

11. Although this instrument is designated as a lease, it is nevertheless understood that it is in fact a sublease and is subordinate and subject to all the terms, provisions and conditions contained in that certain lease dated the_____ day of_____, 19____ by and between_____, as lessor, and_____, as lessee (to whose interest Lessor herein has succeeded). The expiration, relinquishment or termination of said lease for any cause whatsoever, or any transfer, re-assignment or relinquishment by Lessor of its interest in said lease or the demised premises, shall of itself result in the termination of this lease without any notice or action whatever on the part of Lessor or Lessee herein. Any such termination hereof shall be without any liability on the part of Lessor, and in the event of such termination, Lessor shall be obligated only to return to Lessee any rent paid in advance hereunder, which obligation shall exist only in the event that at the time of such termination Lessee shall not be in default in respect to any of the provisions hereof.

12. Any demands or notices required or permitted to be served hereunder shall be deemed properly served when deposited, postage prepaid, registered, in the United States mail, addressed to Lessee at the address of the demised premises, or to Lessor at 555 South Flower Street, Los Angeles, California. In lieu of mailing, as aforesaid, such demands and notices may be personally served upon Lessee.

13. This agreement shall not be binding upon Lessor until executed by a duly authorized officer or agent of Lessor and a fully executed copy hereof delivered to Lessee.

IN WITNESS WHEREOF, the parties have executed these premises as of the date hereinabove written.

RICHFIELD OIL CORPORATION,

By_____

_____
Lessor

_____

_____
Lessee

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POOR COPY

RICHFIELD OIL CORPORATION
SALES CONTRACT

as of
THIS AGREEMENT, executed this 1st day of January, 19 38, between RICHFIELD OIL CORPORATION, hereinafter referred to as "Seller", and W. O. White and Eddie White, hereinafter referred to as "Buyer".

WITNESSETH: That

1. Seller agrees to sell and deliver to Buyer and Buyer agrees to purchase from Seller, as ordered by Buyer during the term hereof, the following petroleum products, in yearly quantities not greater than the maximum nor less than the minimum amounts hereinbelow specified for the respective products, the same to be taken in fairly equal monthly quantities:

	Maximum		Minimum	
GASOLINE	281,225	gals.	56,245	gals.
LUBRICATING OILS	8,500	gals.	880	gals.
GREASES	4,250	lbs.	262	lbs.

W.O.W. E.W.

2. This agreement shall commence as of the 1st day of January, 19 38, and shall continue until the 18th day of November, 1938.

3. The products agreed to be sold and delivered hereunder are for resale by Buyer to the retail trade. Buyer agrees not to resell any of the products delivered hereunder which bear, or the label or container of which bears, the trademark, brand or name of Seller, or which is sold through pumps or other vending equipment bearing the trademark, brand or name of Seller, except at the price designated by Seller as the resale price of such product. Attached hereto, marked "Schedule A", and hereby made a part of this contract, is a schedule of the products deliverable hereunder at the commencement of this contract, and set opposite the name of each product is a price which Seller hereby designates as the resale price of such product effective at the commencement of this contract and until further notice. Seller reserves the right to designate at any time resale prices for such products listed in Schedue "A" as to which resale prices are not designated in said Schedule. Seller shall have the right to change the designated resale price of any of the products to be delivered hereunder at any time and from time to time during the term hereof, by written or oral notice directed to Buyer. Seller shall have the right at any time and from time to time during the term hereof to add to the products deliverable hereunder, as listed in Schedule "A" any other brand of gasoline, lubricating oils and greases which it may hereafter produce or manufacture, and to designate a resale price therefor. Seller shall also have the right at any time and from time to time during the term hereof to discontinue sale of any of the products listed in Schedule "A", and in such event this agreement shall terminate as to such products, but shall remain effective for all other purposes.

4. Prices to be paid by Buyer to Seller for the several grades of gasoline sold and delivered hereunder shall be the designated resale prices thereof at the time and place of delivery to Buyer, less four cents (4¢) per gallon in respect of Seller's Ethyl gasoline, four cents (4¢) per gallon in respect of Seller's first grade non-premium gasoline (now known as "Hi-Octane") and three cents (3¢) per gallon in respect of any gasoline of a grade inferior to Seller's first grade non-premium gasoline.

Prices to be paid by Buyer to Seller for products other than gasoline delivered hereunder shall be Seller's posted prices to service station dealers in effect at the time and place of delivery. Seller's posted price to service station dealers in respect of each product deliverable hereunder other than gasoline is set forth in Schedule "A". The posted price of any such product shall be subject to change by Seller at any time and from time to time during the term hereof.

5. Deliveries hereunder shall be made to Buyer's service station at SE Corner Florida and Sanderson Aves., Hemet, California. All gasoline sold hereunder shall be delivered by tank truck, tank truck and trailer, or such other method of delivery as Seller shall select, and Buyer agrees to maintain storage, which shall conform with all laws and governmental regulations, into which said gasoline may be delivered.

6. In addition to the prices herein provided, Buyer shall pay Seller any and all taxes, increase in taxes or new taxes not included in the prices herein specified, on the products covered by this agreement and/or the production, manufacture, transportation, sale, use and/or other handling of said products.

7. Buyer shall pay Seller cash on delivery for all products delivered hereunder unless otherwise mutually agreed upon from time to time. No allowance of credit shall prevent Seller from returning at any time, at Seller's election, to a cash on delivery basis.

8. Failure or refusal of Buyer to comply with the terms of this agreement or to promptly make payment when due on all products delivered hereunder shall entitle Seller to suspend deliveries until any breach is remedied or payment is made, or to forthwith terminate this agreement.

9. In the event that performance on the part of Seller of any or all of the terms of this agreement is prevented or impeded in whole or in part, or in the event that the cost of such performance by Seller is abnormally increased by reason of acts of God, acts of public administrators, war, governmental regulations or restrictions, strikes, labor disturbances, perils of the sea, riots, fires, floods, earthquakes, embargoes, inability to obtain supplies or labor, loss or shortage of producing, manufacturing or transportation facilities and/or any other cause of causes beyond Seller's control, performance by Seller hereunder shall be excused without any liability whatever on its part.

10. If Buyer purchases Ethyl or Ethyl-treated gasoline hereunder, he shall sell said gasoline in accordance with the rules and regulations prescribed by the Surgeon General of the United States and other health officers, and shall procure the licenses required by the Ethyl Gasoline Corporation. Unless Buyer complies with the terms and provisions of this paragraph, Seller shall not be obligated to sell or deliver Ethyl or Ethyl-treated gasoline hereunder.

11. Neither this agreement nor any of the rights, powers or privileges of Buyer hereunder shall be assignable by Buyer without the written consent of Seller.

12. Any demands or notices required or permitted to be served hereunder shall be deemed properly served when deposited, postage prepaid, registered, in the United States mail, addressed to Buyer at the office specified in paragraph 5 hereof, or to Seller at 555 South Flower Street, Los Angeles, California. In lieu of mailing, as aforesaid, such demands and notices may be personally served upon Buyer.

13. Buyer hereby acknowledges execution hereof without reliance upon any representations, warranties, promises or assurances other than those written herein.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first hereinabove written.

RICHFIELD OIL CORPORATION,

By [illegible] Seller

W. O. White

Eddie White
EDDIE WHITE Buyer

2-B #1574

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Government Exhibit 3-C

ASSIGNMENT OF LEASE

KNOW ALL MEN BY THESE PRESENTS:

That _____, herein called "Assignor", in consideration of the payment by Richfield Oil Corporation, herein called "Assignee", of the sum of ($1.00) dollar, receipt of which is hereby acknowledged, does by these presents sell, assign, transfer and set over to said Richfield Oil Corporation all of his right, title and interest in and to that certain lease dated the day of _____, 19____, between _____, as Lessor, and _____, as Lessee, (to whose interest Assignor has succeeded by assignment) demising premises situated in the City of _____, _____ County of _____, State of _____, particularly described in said lease as follows:

which lease extends to the _____ day of _____, 19____, and assigns also all amendments or extensions of said lease, all subleases thereof and all rents, issues and profits arising therefrom.

Assignor hereby warrants that the said leasehold interest herein assigned is free of mortgages and other liens.

Assignor hereby further agrees that Assignee hereunder may re-assign this lease to Assignor at any time by deposit of duly executed instrument of re-assignment in the United States mail, postage prepaid, directed to Assignor herein at _____, and in such event such re-assignment shall take effect as of the date therein specified, without any act of acceptance on the part of Assignor herein, and Assignee herein shall, as of the effective date of said re-assignment, be relieved from any further obligation under the lease hereby assigned.

Dated this _____ day of _____, 19____.

_____

_____

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Government Exhibit 3D

CONSENT TO ASSIGN, RE-ASSIGN AND SUBLEASE

In consideration of the sum of ($1.00) dollar, receipt whereof is hereby acknowledged, _____, Lessor in the lease above described, does hereby consent to the foregoing assignment by _____, Assignor, to Richfield Oil Corporation, Assignee, without releasing Assignor from any obligations thereunder, and does hereby agree to give to Assignee a ten-day notice in writing of any default in respect to any of the terms, covenants, provisions or conditions contained in said lease; does warrant that said _____ is not in default in respect to any of the terms, covenants or conditions of said lease; that rent has been paid in full to date hereof; and that past or existing defaults, if any, have been waived.

The undersigned does further consent to any re-assignment by Richfield Oil Corporation in accordance with the provisions contained in the foregoing assignment, and does hereby agree that from and after the effective date of said re-assignment Richfield Oil Corporation shall be relieved from any further obligations under the lease so re-assigned.

The undersigned does further grant to Richfield Oil Corporation, its successors and assigns, the right to sub-let the property leased under said lease, and the right to remove, at any time during the term of said lease, and within thirty days after the expiration or any sooner termination thereof, all buildings, improvements and equipment which said Richfield Oil Corporation or its successors or assigns or predecessors shall have placed upon said premises.

Dated this ____ day of _____, 19____.

_____

_____

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Government Exhibit 4

3-C

SERVICE STATION LEASE

THIS LEASE, made and entered into this day of 19 by and between , herein called "Lessee," (whether one or more and when referred to by pronoun the singular neuter gender will be used), and RICHFIELD OIL CORPORATION, herein called "Lessor,"

WITNESSETH:

That in consideration of the payment by Lessee of the rent herein specified and of the mutual covenants herein contained, Lessor hereby demises and leases unto Lessee and Lessee takes and rents from Lessor that certain real estate situated in the City of County of State of described as follows:

together with all appurtenances thereunto belonging, and together also with the buildings, facilities, equipment and other improvements located thereon and listed in the inventory hereto attached marked "Exhibit A," which inventory is by this reference incorporated in this lease and made a part hereof for all purposes, and with all other improvements, if any, hereafter erected or placed thereon by Lessee.

TO HAVE AND TO HOLD the above demised and leased real estate and improvements (hereinafter referred to collectively as "premises"), and all rights, privileges and appurtenances thereunto belonging, unto Lessee, its successors and assigns, for the term

SERVICE STATION LEASE

THIS LEASE, made and entered into this day of 19 by and between , herein called "Lessor," (whether one or more and when referred to by pronoun the singular neuter gender will be used), and RICHFIELD OIL CORPORATION, herein called "Lessee,"

W I T N E S S E T H :

That in consideration of the payment by Lessee of the rent herein specified and of the mutual covenants herein contained, Lessor hereby demises and leases unto Lessee and Lessee takes and rents from Lessor that certain real estate situated in the City of County of State of described as follows:

together with all appurtenances thereunto belonging, and together also with the buildings, facilities, equipment and other improvements located thereon and listed in the inventory hereto attached marked "Exhibit A," which inventory is by this reference incorporated in this lease and made a part hereof for all purposes, and with all other improvements, if any, hereafter erected or placed thereon by Lessee.

TO HAVE AND TO HOLD the above demised and leased real estate and improvements (hereinafter referred to collectively as "premises"), and all rights, privileges and appurtenances thereunto belonging, unto Lessee, its successors and assigns, for the term commencing the day of 19 and ending the day of 19 , unless this lease shall be sooner terminated in a manner herein provided.

The following shall constitute the covenants of this lease, and the parties hereto agree as follows:

1. Lessee shall pay as full rental for said real and personal property during the effective term of this lease the following amounts at the following times:

All rent shall be paid in lawful money of the United States by check or draft to the order of Lessor and mailed to

or to such other address as Lessor may from time to time designate in writing.

2. The improvements, buildings and facilities erected and located on the demised premises are designed for the operation of a gasoline service station thereon, and Lessee shall use the demised premises and property primarily for such purpose; and in no event shall said premises be used for any unlawful or offensive purpose, nor shall Lessee commit any nuisance thereon. In the event the sale of gasoline or other petroleum products upon the demised premises or the operation of a gasoline service station thereon is prevented by law, or the whole or such part of the demised premises as will render the balance thereof unsatisfactory for the operation of a gasoline service station thereon is taken for public use, this lease shall forthwith terminate.

3. Lessee shall use the demised premises and improvements with due and reasonable care and on termination hereof shall deliver up said premises and improvements unto Lessor in good order and condition, damage and depreciation due to reasonable use, ordinary wear and tear, fire, storm, flood, earthquake, action of the elements, strike, riot, labor disturbances, war and unavoidable casualties and matters beyond the control of Lessee excepted. Lessee agrees to commence, within ten (10) days after receipt of notice in respect thereto from Lessor, all repairs and/or replacements necessary in order to keep and maintain the leased property in a suitable condition for the operation by Lessee of a gasoline service station.

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4. Lessee shall have the right and privilege of erecting, placing, operating and maintaining on said premises all buildings, structures, improvements, driveways, tanks, remainers, piping, signs, appliances and equipment of any nature on, under and above the ground that it may / make or desire to use in operating, transacting and conducting on said premises the business of storing, marketing and distributing petroleum products and automotive accessories by means of a gasoline and oil filling and service station, or by other marketing methods, and by any other business incident to (like) of a service station; it being understood that Lessee is not hereby restricted from using said premises for any other lawful purpose. Lessee shall have the further right and privilege of painting all or any part of the property leased hereunder so long as said property is not thereby unreasonably damaged; and Lessee may make such changes as it desires to any existing structures and improvements, but any structural alterations or changes made to improvements belonging to Lessor shall become part of the real estate and may not be removed by Lessee at the end of the term of this lease.

5. At any time during the term of this lease and upon termination thereof by lapse of time or in any manner and within a reasonable time thereafter Lessee may, at its option and expense, remove from said premises any and all buildings, structures, improvements, money safes or checks, equipment, appliances or other property of whatsoever nature placed or owned by it thereon, whether or not affixed to the premises or to any improvement on the premises (except alterations made to Lessor's improvements), and after such removal shall restore the surface of the ground to its uniform and even condition, free from all excavations and debris and within said time Lessee at its option may paint out and/or otherwise remove from the premises its trade colors together with all trade signs, names and insignia, including signs and insignia belonging to Lessee, and irrespective of the manner in which said signs and insignia are attached to the premises, provided, however, that if Lessee at such time shall be in default in the payment of rents or any other charges hereunder, Lessee shall have a lien on said buildings, structures and improvements to secure payment of such rents or charges. Should Lessee fail to remove any buildings, structures and other property belonging to it located upon the demised premises within a reasonable time after such termination of this lease, title to the same shall pass to Lessor.

6. Lessee shall have the right to make proper connections with any and all water, gas and power lines and pipe lines on or serving the demised premises, and may continue the use and service thereof during the term of this lease. Lessee shall be liable for and agrees to pay all charges for water, gas, electric current, telephone and any other public utility or service used by it.

7. Lessee agrees to pay before delinquency all general and special taxes and special assessments with respect to the premises leased hereunder. Lessee agrees to pay all taxes levied and assessed or to be levied and assessed upon its own improvements and property located on said premises, it being understood that Lessee shall not be liable for any special taxes or special assessments save with respect to Lessee's own property.

8. Lessor agrees not to conduct or permit to be conducted on premises controlled by Lessor, if any, within two hundred (200) yards of the premises demised and leased, any business venture from which petroleum products other than those supplied by Lessee are sold or distributed.

9. Lessor warrants that title to the premises demised hereby is vested in Lessor, free and clear of all liens, clouds and encumbrances except and current taxes not delinquent, and that there are no municipal or other governmental restrictions, leases or other agreements with respect to said premises that would affect the use of all or any part thereof for a gasoline service station. In the event Lessor's interest in the demised premises is a leasehold interest Lessor agrees to faithfully fulfill and perform the terms of the lease to which this lease is subject so as not to cause any default of Lessor in any of the terms thereof. Lessor shall be liable to Lessee for any damages suffered by Lessee by virtue of a termination of any such prior lease, arising out of default of Lessor herein thereunder.

10. In the event Lessee shall be in default in the payment of rentals or other charges hereunder or shall otherwise breach its covenants or obligations hereunder, and shall be and remain in default for a period of thirty (30) days after notice from Lessor to it of such default, Lessor shall have the right and privilege of terminating this lease and declaring the same at an end and of entering upon and taking possession of said premises, and shall have the remedies now or hereafter provided by law for recovery of rent, repossession of the premises and damages occasioned by such default.

In the event Lessor shall breach or be in default in the performance of any of the covenants or obligations on it herein imposed, and shall remain in default for a period of thirty (30) days after notice from Lessee to it of such default, Lessee shall have the right and privilege of terminating this lease and declaring the same at an end, and/or shall have the remedies now or hereafter provided by law for recovery of damages occasioned by such default.

The waiver by either party of any breach of this lease by the other, or of any right to which such party is entitled, shall not be deemed a waiver by such party in any other instance, or for any other breach or right.

In any action between the parties hereto, their successors or assigns, for a breach or for the enforcement of any of the terms or conditions of this lease, a reasonable attorney's fee, to be fixed by the court, shall be added to and be made a part of the recoverable costs in such action, in favor of the successful party.

11. If at any time during the term hereof Lessee, or if there be more than one, any Lessee, shall be indebted to Lessor on any account whatsoever, Lessor shall have the right to apply any rental accrued or accruing upon said unpaid indebtedness and Lessee agrees that the amount so applied shall constitute rental payment hereunder. In particular, but without limitation as to the foregoing, Lessee may offset against rentals payable hereunder rentals payable by Lessor to Lessee under any sublease of the property leased hereunder.

12. In the event Lessor during the term hereof receives from a third party a bona fide offer to purchase the leased premises, or any part thereof, or any buildings of Lessor of which the leased premises are a part, and shall decide to sell the same for the amount named in said offer, Lessor shall promptly give to Lessee written notice of the terms of such offer and of Lessor's willingness to sell for the price offered, and Lessee shall have the option and privilege of purchasing the premises subject to such offer at said price and shall notify Lessor in writing within ten (10) days after the date it receives notice from Lessor whether Lessee will purchase said premises for the amount specified in said offer. In the event Lessee shall not give Lessor notice within said ten (10) day period of Lessee's election to purchase for the amount specified in said offer, Lessor may thereafter sell said premises to the party making the offer, subject, however, to the leasehold estate and rights herein granted to Lessee, irrespective of whether or not said premises are sold to such party, notice of any subsequent bona fide offers acceptable to Lessor shall be given to Lessee upon the same terms and conditions for acceptance or refusal, as hereinabove provided.

13. In the event of any termination of that certain Operator's Lease, executed concurrently herewith by and between the parties hereto, by the terms of which Lessee herein as Lessor therein subleases the premises demised hereby to Lessor herein as Lessee therein, Lessor shall be privileged to forthwith terminate this lease by means of a notice in writing to Lessee. Any notice of the aforesaid nature may be served by Lessee at any time after but not before any termination of said Operator's Lease.

14. All notices given under this instrument shall be in writing and may be given by depositing the notice in the United States registered mail, postage prepaid, enclosed in an envelope addressed to the party to be notified at such party's address as shown in this instrument, or at any other known address of any Lessor, and the date upon which such notice is so mailed shall be treated as the date of service; or such notice may be served on Lessor in person or on an officer or manager of Lessee. If there be more than one Lessor, notice to any of them shall constitute notice to all.

15. This agreement and each and all of the covenants, obligations and conditions hereof, shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of Lessor, and the successors and assigns of Lessee. Although designated in the singular number as "Lessor," if there be more than one, they and each of them shall be jointly and severally bound by the obligations, conditions and covenants herein imposed. Lessee may assign this lease or sublet the premises or any part thereof without the consent of Lessor, but in the event of any such assignment or subletting Lessee shall at all times remain liable to Lessor for payment of rents and for the faithful performance of all obligations imposed upon Lessee hereunder.

16. The parties hereto agree that neither the making, execution nor delivery of this lease has been induced by any representation, statement, warranty or agreement other than those herein expressed, and that all prospects, negotiations and representations with reference to matters covered by this lease are merged in this instrument. The parties understand and agree that regardless of any partial performance or other circumstance, this lease shall not become binding upon Lessee until it has been signed on its behalf by its President, Vice President or duly authorized agent, and that no amendment or modification hereof shall be valid unless evidenced in writing and signed by one of such officers or agents.

IN WITNESS WHEREOF, the parties hereto have executed this lease the day and year first above written.

_____

_____
Lessor

RICHFIELD OIL CORPORATION,

By _____
Lessee

Government Exhibit 4-A

3-C
OPERATOR'S
LEASE

THIS LEASE, executed this day of 19 between RICHFIELD OIL CORPORATION, herein called "Lessor," and herein called "Lessee," (whether one or more and when referred to by pronoun the singular neuter gender will be used).

WITNESSETH:

That in consideration of the payment by Lessee of the rent herein specified and of the mutual covenants herein contained, Lessor hereby demises and leases unto Lessee and Lessee takes and rents from Lessor those certain premises in the City of County of , State of , more particularly described on the reverse side hereof in paragraph numbered "15" hereof, together with all appurtenances thereunto belonging, and together also with the buildings, facilities and equipment embraced within the terms of the lease referred to in paragraph numbered "15" hereof, and such buildings, facilities and equipment as may be placed upon said premises by Lessor herein under and pursuant to said latter lease.

TO HAVE AND TO HOLD unto Lessee for the term commencing the day of 19 and ending the day of 19 unless this lease shall be sooner terminated in a manner herein provided.

The following shall constitute the covenants of this lease, and the parties hereto agree as follows:

1. Lessee shall pay to Lessor as rent for said real and personal property during the effective term of this lease the amounts set forth on the reverse side hereof in paragraph numbered "16" hereof, at the times and in the manner as in said paragraph provided.

2. The improvements, buildings and facilities erected and located on the demised premises are designed for the operation of a gasoline service station thereon, and Lessee shall use the demised premises and property primarily for such purpose; and in no event shall said premises be used for any unlawful or offensive purpose, nor shall Lessee commit any nuisance thereon. In the event the sale of gasoline or other petroleum upon the demised premises or the operation of a gasoline service station thereon is prevented by law, or the whole, or such part of the demised premises as will render the balance thereof unsatisfactory for the operation of a gasoline service station thereon, is taken for public use, this lease shall forthwith terminate.

3. Lessee shall, during the term hereof, maintain the demised premises, improvements, buildings, fixtures and equipment in good order and repair and in a clean and safe condition at Lessee's cost and expense. In the event of Lessee's failure so to do, Lessor may enter upon the demised premises and make necessary repairs for the account of Lessee and/or may terminate this lease. Lessee shall make no change, alteration or substitution in the demised premises, improvements, buildings, fixtures and equipment except such as may be necessary to enable Lessee to continue business on said premises, unless the consent in writing of Lessor be first obtained.

4. Upon the expiration or sooner termination of this agreement Lessee shall yield up and return to Lessor the demised premises, improvements, buildings, fixtures and equipment in as good condition as when received by Lessee, damage and depreciation due to ordinary wear and use excepted; and shall pay Lessor the cost of restoring the premises, improvements, buildings, fixtures and equipment to the condition in which they were at the time when received by Lessee, damage and depreciation due to ordinary wear and use excepted, together with the value of any equipment lost or damaged beyond repair.

5. Should any of the improvements on the demised premises be destroyed by act of God, fire, explosion, the elements or any cause not due to the negligence, neglect or willful act of Lessee and be thereby rendered unsatisfactory for the conduct of Lessee's business thereon, Lessee shall be privileged to terminate this lease or repair the premises, in which event rent payable by Lessee hereunder shall be abated for the time and to the extent that he is prevented from using the premises or any part thereof.

6. During the occupancy of the demised premises Lessee shall pay all charges accruing for gas, water, electricity, telephone and other public utilities, and shall not permit any liens to attach to the demised premises. Lessee shall also pay the total amount of all taxes and assessments levied or imposed against all property of Lessee located on the premises. Upon failure of Lessee in this respect Lessor may, but shall not be obligated to, pay such taxes and/or charges and add the same to the rental payable hereunder.

7. In the event Lessee shall at any time during the term hereof be in default in respect to the payment of rent herein provided or in respect to the performance of any other of the provisions hereof, or should Lessee abandon or vacate the demised premises, Lessor shall be privileged at its option to resume possession of the demised premises, with or without process of law; thereupon, at Lessor's option, this lease and all of the rights of Lessee hereunder shall forthwith terminate. In the event of such re-entry by Lessor, Lessor shall be privileged to possess and to hold all property of Lessee which may be situated on the demised premises as a pledge to secure payment by Lessee of any sum or sums which may be due or owing to Lessor by Lessee on any account or accounts whatever. The foregoing remedies shall be in addition to those now or hereafter provided by law.

8. The waiver of any breach hereunder shall not be deemed a continuing waiver or a waiver of any subsequent breach, whether of the same or a different provision of this agreement.

9. This lease shall not be assignable, voluntarily or by operation of law, nor shall Lessee sublet any part of the demised premises without the written consent of Lessor first having been obtained. This lease shall not become an asset of the estate of Lessee but shall terminate on his death.

10. Lessee agrees to indemnify and hold Lessor free and harmless from any and all claims for damage to property or injury to or death of person or persons occurring upon the demised premises or arising out of any of the operations of Lessee, his agents or employees thereon or thereabout during the term hereof.

11. Although this instrument is designated as a lease, it is nevertheless understood that it is in fact a sublease and is subordinate and subject to all the terms, provisions and conditions contained in that certain lease dated the day of 19 by and between as lessor, and as lessee (to whose interest Lessee herein has succeeded). The expiration, relinquishment or termination of said lease for any cause whatsoever, or any transfer, re-assignment or relinquishment by Lessee of its interest in said lease of the demised premises shall of itself result in the termination of this lease without any notice or action whatever on the part of Lessor or Lessee herein. Any termination hereof shall be without any liability on the part of Lessor, and in the event of such termination Lessor shall be obligated only to return to Lessee any rent paid in advance hereunder, which obligation shall exist only in the event that at the time of such termination Lessee shall not be in default in respect to any of the provisions hereof.

12. In the event of any termination of that certain Operator's Sales Contract executed concurrently herewith by and between the parties hereto, covering the purchase and sale of Lessee's entire requirements of certain petroleum products for resale from the premises demised hereby, Lessor shall be privileged to terminate this lease by means of a five (5) day notice in writing to Lessee.

13. Any demands or notices required or permitted to be served hereunder shall be deemed properly served when deposited, postage prepaid, registered, in the United States mail, addressed to Lessee at the address of the demised premises, or to Lessee at 555 South Flower Street, Los Angeles 13, California. In lieu of mailing, as aforesaid, such demands and notices may be personally served upon Lessee.

14. This agreement shall not be binding upon Lessor until executed by a duly authorized officer or agent of Lessor and a fully executed copy hereof delivered to Lessee.

IN WITNESS WHEREOF, the parties have executed this lease as of the date first hereinabove written.

RICHFIELD OIL CORPORATION,

By

Lessor

Lessee

3-C
OPERATOR'S
SALES CONTRACT

THIS AGREEMENT, executed this day of , 19 between RICHFIELD OIL CORPORATION, hereinafter referred to as "Seller," and

hereinafter referred to as "Buyer," (whether one or more and when referred to by pronoun the singular neuter gender will be used).

WITNESSETH: THAT

1. Seller agrees to sell and deliver to Buyer and Buyer agrees to purchase from Seller, during the period commencing 19 and ending , 19 , Buyer's entire requirements of the following automotive petroleum products for resale from the service station hereinafter mentioned, provided, however, that in no event shall Buyer purchase and receive during any calendar month of the term hereof less than the minimum quantities specified below:

	Minimum
GASOLINES	gals.
LUBRICATING OILS	gals.
GREASES	lbs.

2. The products agreed to be sold and delivered hereunder are for resale by Buyer to the retail trade. Buyer agrees not to resell any of the products delivered hereunder which bear, or the label or container of which bears, the trade mark, brand or name of Seller or which is sold through pumps or other vending equipment bearing the trade mark, brand or name of Seller, except at the price designated by Seller as the resale price at such pump. Seller shall have the right to change the designated resale price of any of the products to be delivered hereunder at any time or from time to time during the term hereof by written or oral notice directed to Buyer. Attached hereto marked "Schedule A" and hereby made a part of this contract is a schedule of the products to be delivered hereunder as of the date of commencement of this contract, but opposite the name of each gasoline listed in said Schedule A is a price which Seller hereby designates as the resale price of such gasoline effective at the execution of this contract and until further notice. Seller reserves the right to designate resale prices for all other products listed in said Schedule A for which prices are not designated. Seller shall have the right at any time and from time to time during the term hereof to add to the products listed on said Schedule A any other brand of gasoline, lubricating oils and greases which it may hereafter purchase and manufacture and to designate a resale price therefor, and Seller shall also have the right at any time and from time to time during the term hereof to discontinue sale of any of the products listed in said Schedule A and in such event this agreement shall terminate as to such products but shall remain effective for all other purposes. Seller reserves the right at any time or from time to time to change the specifications of any product to be sold and delivered hereunder.

3. The prices to be paid by Buyer to Seller for Seller's Ethyl or Flyt Structure Gasoline and Seller's Hi-Octane or Dynaflyt Structure Gasoline shall be Seller's designated resale prices thereof at time and place of delivery to Buyer, less 4 per gallon. Should Seller elect to market a Flyt Structure Gasoline the price thereafter shall be Seller's designated resale price thereof at time and place of delivery to Buyer, less 3¢ per gallon. Seller shall have the right to change its said designated resale prices at any time or from time to time during the term hereof by written or oral notice directed to Buyer.

Prices to be paid by Buyer to Seller for products other than gasoline delivered hereunder shall be Seller's posted or list prices to service station dealers in effect at the time and place of delivery. Seller's posted or list prices to service station dealers in respect to such products are set forth in Schedule A hereof. The posted price of any such product shall be subject to change by Seller at any time and from time to time during the term hereof.

4. Deliveries hereunder shall be made to Buyer's service station at , State of . All gasoline sold hereunder shall be delivered by tank truck, tank trunk and trailer, or such other method of delivery as Seller shall select, and Buyer agrees to maintain storage, which shall conform with all laws and governmental regulations, into which said gasoline may be delivered.

5. In addition to the prices herein provided, Buyer shall pay Seller any and all taxes, increase in taxes or new taxes not included in the prices herein specified on the products covered by this agreement and/or on and/or measured by the production, manufacture, transportation, sale, use and/or other handling of said products.

6. Buyer shall pay Seller cash on delivery for all products delivered hereunder unless otherwise mutually agreed upon from time to time. No shortages or credit shall prevent Seller from returning at any time, at Seller's election, to a cash on delivery basis.

7. Failure or refusal of Buyer to strictly comply with the terms of this agreement or to promptly make payment when due on all products delivered hereunder shall entitle Seller to suspend deliveries until any breach is remedied or payment is made, or to forthwith terminate this agreement.

8. Seller shall be privileged at any time and from time to time during the term hereof to paint in its colors and lettering the buildings and equipment constituting the service station mentioned in paragraph numbered "4" hereof. In the event of any termination of this agreement prior to the expiration date set forth in paragraph numbered "1" hereof Buyer shall forthwith pay to Seller a sum equal to the total of all monies expended by Seller in performing such painting during the two (2) year period preceding such termination.

9. In the event that performance on the part of the Seller of any or all of the terms of this agreement is prevented or impeded in whole or in part, or in the event that the cost of such performance by Seller is abnormally increased by reason of acts of God, acts of public enemies, war, governmental regulations or restrictions, strikes, labor disturbances, perils of the sea, riots, fires, floods, earthquakes, embargoes, inability to obtain supplies or labor, loss or shortage of producing, manufacturing or transportation facilities and/or any other cause or causes beyond Seller's control, or in the event, by reason of statute, law, ordinance, order, mandate, decision, judgment, decree, rule or regulation of any governmental body, board, tribunal, court or official, whether specifically directed against Seller or Buyer hereunder or this contract or operations hereunder, or otherwise, performance hereunder is interfered with or regulated, or any loss or disadvantage is suffered by Seller due to an enforced or permitted reduction in prices or imposition of liability or penalty under or in connection with any other contract because of the existence of this contract, performance by Seller hereunder shall be excused and/or Seller shall be privileged to forthwith terminate this agreement without any liability whatever on its part. Failure of Seller to fill any order or orders for reasons of aforesaid causes shall reduce the purchase obligations of Buyer to that extent. In the event that Seller is unable to make delivery to all of its customers by reason of any of the causes set forth in this paragraph and yet is able to make some deliveries, its failure to make deliveries in whole or in part to Buyer, even while making deliveries of the same or similar commodities to other buyers or consignees or to its own bulk storage and distributing plants, plants or distributors for sale and delivery to the general public, shall not constitute a default by Seller.

10. Buyer agrees to comply with all laws, statutes, and ordinances of all governmental authorities.

11. Neither this agreement nor any of the rights, powers or privileges of Buyer hereunder shall be assignable by Buyer without the written consent of Seller.

12. Any demands or notices required or permitted to be served hereunder shall be deemed properly served when deposited, postage prepaid, registered, in the United States mail, addressed to Buyer at the address specified in paragraph 4 hereof, or to Seller at 555 South Flower Street, Los Angeles 13, California. In lieu of mailing, as aforesaid, such demands and notices may be personally served upon Buyer.

13. In the event by reason of statute, law, ordinance, order, mandate, decision, judgment, decree, rule or regulation of any governmental authority, bureau, tribunal, court or official, whether specifically directed against either party hereto or this contract or the 3-C transaction of which this contract is a part, or operations hereunder, or otherwise, performance hereunder is interfered with or regulated, or any loss or disadvantage is suffered by Seller due to an enforced or resultant reduction in prices or imposition of any penalty under or in connection with any other contract because of the existence of this contract or said 3-C transaction, Seller may forthwith terminate any or all instruments constituting said 3-C transaction.

14. Buyer hereby acknowledges execution hereof without reliance upon any representations, warranties, promises or assurances other than those written herein.

15. This agreement terminates as of the date of commencement hereof all contracts between the parties hereto, or their assignees, covering sale and delivery of petroleum products to Buyer's service station the day and year first hereinabove written.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first hereinabove written.

RICHFIELD OIL CORPORATION,

By
Seller

Buyer

265

FORM 703 — 6-48

3-C
OPERATOR'S
SALES CONTRACT

THIS AGREEMENT, executed this day of 19 between RICHFIELD OIL CORPORATION, hereinafter referred to as "Seller," and hereinafter referred to as "Buyer," (whether one or more and when referred to by pronoun the singular neuter gender will be used).

WITNESSETH: THAT

1. Seller agrees to sell and deliver to Buyer and Buyer agrees to purchase from Seller, as ordered by Buyer during the period commencing , 19 , and ending , 19 , the following petroleum products in calendar monthly quantities not greater than the maximum nor less than the minimum amounts hereinbelow specified. For fractional monthly periods said amounts will be duly prorated.

	Minimum	Maximum
GASOLINES	..... gals.	..... gals.
LUBRICATING OILS	..... gals.	..... gals.
GREASES	..... lbs.	..... lbs.

The above quantities represent those to be purchased and sold under normal business conditions and in the event, because of climatic or other conditions Buyer's sales are abnormally less during certain months of the year, the aforesaid quantities will be proportionately reduced for said months based upon previous business experience of Buyer's station or of business generally in the vicinity in the event Buyer's station has had no previous business experience.

2. The products agreed to be sold and delivered hereunder are for resale by Buyer to the retail trade. Buyer agrees not to resell any of the products delivered hereunder which bear, or the label or container of which bears, the trade mark, brand or name of Seller or which is sold through pumps or other vending equipment bearing the trade mark, brand or name of Seller, except at the price designated by Seller as the resale price of such product. Seller shall have the right to change the designated resale price of any of the products to be delivered hereunder at any time or from time to time during the term hereof by written or oral notice directed to Buyer. Attached hereto marked "Schedule A" and hereby made a part of this contract is a schedule of the products to be delivered hereunder as of the date of commencement of this contract. Set opposite the name of each gasoline listed in said Schedule A is a price which Seller hereby designates as the resale price of such gasoline effective at the execution of this contract and until further notice. Seller shall the right to designate resale prices for all other products listed in said Schedule A for which prices are not designated. Seller shall have the right at any time and from time to time during the term hereof to add to the products listed on said Schedule A any other brand of gasoline, lubricating oils and greases which it may hereafter produce and manufacture and to discontinue sale of any of the products listed in said Schedule A and in such event this agreement shall terminate as to such products but shall remain effective for all other Seller shall also have the right at any time and from time to time during the term hereof to designate a resale price therefor, and purposes. Seller reserves the right at any time or from time to time to change the specifications of any product to be sold and delivered hereunder.

3. The prices to be paid by Buyer to Seller for Seller's Ethyl or First Structure Gasoline and Seller's Hi-Octane or Second Structure Gasoline shall be Seller's designated resale prices thereof at time and place of delivery to Buyer, less 4¢ per gallon. Should Seller elect to market a Third Structure Gasoline the price therefor shall be Seller's designated resale price thereof at time and place of delivery to Buyer, less 3¢ per gallon. Seller shall have the right to change its said designated resale prices at any time or from time to time during the term hereof by written or oral notice directed to Buyer

Prices to be paid by Buyer to Seller for products other than gasoline delivered hereunder shall be Seller's posted or list prices to service station dealers in effect at the time and place of delivery. Seller's posted or list prices to service station dealers in respect to such products are set forth in Schedule A hereof. The posted price of any such product shall be subject to change by Seller at any time and from time to time during the term hereof.

4. Deliveries hereunder shall be made to Buyer's service station at , State of . All gasoline sold hereunder shall be delivered by tank truck, tank truck and trailer, or such other method of delivery as Seller shall select, and Buyer agrees to maintain storage, which shall conform with all laws and governmental regulations, into which said gasoline may be delivered.

5. In addition to the prices herein provided, Buyer shall pay Seller any and all taxes, increase in taxes or new taxes not included in the prices herein specified on the products covered by this agreement and/or on and/or measured by the production, manufacture, transportation, sale, use and/or other handling of said products.

6. Buyer shall pay Seller cash on delivery for all products delivered hereunder unless otherwise mutually agreed upon from time to time. No allowance of credit shall prevent Seller from returning at any time, at Seller's election, to a cash on delivery basis.

7. Failure or refusal of Buyer to strictly comply with the terms of this agreement or to promptly make payment when due on all products delivered hereunder shall entitle Seller to suspend deliveries until any breach is remedied or payment is made, or to forthwith terminate this agreement.

8. Seller shall be privileged at any time and from time to time during the term hereof to paint in its colors and insignia the buildings and equipment constituting the service station mentioned in paragraph numbered "4" hereof. In the event of any termination of this agreement prior to the expiration date set forth in paragraph numbered "1" hereof Buyer shall forthwith pay to Seller a sum equal to the total of all monies expended by Seller in performing such painting during the two (2) year period preceding such termination.

9. In the event that performance on the part of the Seller of any or all of the terms of this agreement is prevented or impeded in whole or in part, or in the event that the cost of such performance by Seller is abnormally increased by reason of acts of God, acts of public administrators, war, governmental regulations or restrictions, strikes, labor disturbances, perils of the sea, riots, fires, floods, earthquakes, embargoes, inability to obtain supplies or labor, loss or shortage of producing, manufacturing or transportation facilities and/or any other cause or causes beyond Seller's control, or in the event, by means of statute, law, ordinance, order, mandate, decision, judgment, decree, rule or regulation of any governmental body, board, tribunal, court or official, whether specifically directed against Seller or Buyer hereunder or this contract or operations hereunder, or otherwise, performance hereunder is interfered with or regulated, or any loss or disadvantage is suffered by Seller due to an enforced or resultant reduction in prices or incurrence of liability or penalty under or in connection with any other contract because of the existence of this contract, performance by Seller hereunder shall be excused and/or Seller shall be privileged to forthwith terminate this agreement without any liability whatever on its part. Failure of Seller to all any order or orders by reason of the aforesaid causes shall reduce the purchase obligations of Buyer to that extent. In the event that Seller is unable to make delivery to all of its customers by reason of any of the causes set forth in this paragraph and yet is able to make some deliveries, its failure to make deliveries in whole or in part to Buyer, even while making deliveries of the same or similar commodities to other buyers or consignees or to its own bulk storage and distributing plants, agents and distributors for sale and delivery to the general public, shall not constitute a default by Seller.

10. Buyer agrees to comply with all laws, statutes, and ordinances of all governmental authorities.

11. Neither this agreement nor any of the rights, powers or privileges of Buyer hereunder shall be assignable by Buyer without the written consent of Seller.

12. Any demands or notices required or permitted to be served hereunder shall be deemed properly served when deposited, postage prepaid, registered, in the United States mail, addressed to Buyer at the address specified in paragraph 4 hereof, or to Seller at 555 South Flower Street, Los Angeles 13, California. In lieu of mailing, as aforesaid, such demands and notices may be personally served upon Buyer.

13. In the event by means of statute, law, ordinance, order, mandate, decision, judgment, decree, rule or regulation of any governmental authority, board, tribunal, court or official, whether specifically directed against either party hereto or this contract or the 3-C transaction of which this contract is a part, or operations hereunder, or otherwise, performance hereunder is interfered with or regulated, or any loss or disadvantage is suffered by Seller due to an enforced or resultant reduction in prices or incurrence of any penalty under or in connection with any other contract because of the existence of this contract or said 3-C transaction, Seller may forthwith terminate any or all instruments constituting said 3-C transaction.

14. Buyer hereby acknowledges execution hereof without reliance upon any representations, warranties, promises or assurances other than those written herein.

15. This agreement terminates as of the date of commencement hereof all contracts between the parties hereto, or their assignors, covering sale and delivery of petroleum products to Buyer's service station described in paragraph 4 hereof.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first hereinabove writ .

RICHFIELD OIL CORPORATION,

By_____ Seller

_____ Buyer

3962

THIS PAGE BOUND VERTICAL IN BOOK

Government Exhibit 4-D

3-C
OPERATOR'S
LEASE

THIS LEASE, executed this day of 19 , between RICHFIELD OIL CORPORATION, herein called "Lessor," and herein called "Lessee," (whether one or more and when referred to by pronoun the singular neuter gender will be used).

WITNESSETH:

That in consideration of the payment by Lessee of the rent herein specified and of the mutual covenants herein contained, Lessor hereby demises and leases unto Lessee and Lessee takes and rents from Lessor those certain premises in the City of , State of , County of more particularly described on the reverse side hereof in paragraph numbered "15" hereof, together with all appurtenances thereunto belonging, and together also with the buildings, facilities and equipment embraced within the terms of the lease referred to in paragraph numbered "11" hereof, and such buildings, facilities and equipment as may be placed upon said premises by Lessor herein under and pursuant to said latter lease.

TO HAVE AND TO HOLD unto Lessee for the term commencing the day of 19 and ending the day of 19 unless this lease shall be sooner terminated in a manner herein provided.

The following shall constitute the covenants of this lease, and the parties hereto agree as follows:

1. Lessee shall pay to Lessor as rent for said real and personal property during the effective term of this lease the amounts set forth on the reverse side hereof in paragraph numbered "16" hereof, at the times and in the manner as in said paragraph provided.

2. The improvements, buildings and facilities erected and located on the demised premises are designed for the operation of a gasoline service station thereon, and Lessee shall use the demised premises and property primarily for such purpose; and in no event shall said premises be used for any unlawful or offensive purpose, nor shall Lessee commit any nuisance thereon. In the event the sale of gasoline or other petroleum upon the demised premises or the operation of a gasoline service station thereon is prevented by law, or the whole, or such part of the demised premises as will render the balance thereof unsatisfactory for the operation of a gasoline service station thereon, is taken for public use, this lease shall forthwith terminate.

3. Lessee shall, during the term hereof, maintain the demised premises, improvements, buildings, fixtures and equipment in good order and repair and in a clean and safe condition at Lessee's cost and expense. In the event of Lessee's failure so to do, Lessor may enter upon the demised premises and make necessary repairs for the account of Lessee and/or may terminate this lease.

4. Upon the expiration or sooner termination of this agreement Lessee shall yield up and return to Lessor the demised premises, improvements, buildings, fixtures and equipment in as good condition as when received by Lessee, damage and depreciation due to ordinary wear and use excepted; and shall pay Lessor the cost of restoring the premises, improvements, buildings, fixtures and equipment to the condition in which they were at the time when received by Lessee, damage and depreciation due to ordinary wear and use excepted, together with the value of any equipment lost or damaged beyond repair.

5. Should any of the improvements on the demised premises be destroyed by act of God, fire, explosion, the elements or any cause not due to the negligence, neglect or willful act of Lessee and be thereby rendered unsatisfactory for the conduct of Lessee's business thereon, Lessor shall be privileged to terminate this lease or repair the premises, in which event rent payable by Lessee hereunder shall be abated for the time and to the extent that he is prevented from using the premises or any part thereof.

6. During the occupancy of the demised premises Lessee shall pay all charges accruing for gas, water, electricity, telephone and other public utilities, and shall not permit any liens to attach to the demised premises. Lessee shall also pay the total amount of all taxes and assessments levied or imposed against all property of Lessee located on the premises. Upon failure of Lessee in this respect Lessor may, but shall not be obligated to, pay such taxes and/or charges and add the same to the rental payable hereunder.

7. In the event Lessee shall at any time during the term hereof be in default in respect to the payment of rent herein provided or in respect to the performance of any other of the provisions hereof, or should Lessee abandon or vacate the demised premises, Lessor shall be privileged at its option to resume possession of the demised premises, with or without process of law; thereupon, at Lessor's option, this lease and all of the rights of Lessee hereunder shall forthwith terminate. In the event of such re-entry by Lessor, Lessor shall be privileged to possess and to hold all property of Lessee which may be situated on the demised premises as a pledge to secure payment by Lessee of any sum or sums which may be due or owing to Lessor by Lessee on any account or accounts whatever. The foregoing remedies shall be in addition to those now or hereafter provided by law.

8. The waiver of any breach hereunder shall not be deemed a continuing waiver or a waiver of any subsequent breach, whether of the same or a different provision of this agreement.

9. This lease shall not be assignable, voluntarily or by operation of law, nor shall Lessee sublet any part of the demised premises without the written consent of Lessor first having been obtained. This lease shall not become an asset of the estate of Lessee but shall terminate on his death.

10. Lessee agrees to indemnify and hold Lessor free and harmless from any and all claims for damage to property or injury to or death of person or persons occurring upon the demised premises or arising out of any of the operations of Lessee, his agents or employees, thereon or thereabout during the term hereof.

11. Although this instrument is designated as a lease, it is nevertheless understood that it is in fact a sublease and is subordinate and subject to all the terms, provisions and conditions contained in that certain lease dated the day of 19 , by and between as lessor, and as lessee (to whose interest Lessor herein has succeeded). The expiration, relinquishment or termination of said lease for any cause whatsoever, or any transfer, re-assignment or relinquishment by Lessor of its interest in said lease of the demised premises shall of itself result in the termination of this lease without any notice or action whatever on the part of Lessor or Lessee herein. Any termination hereof shall be without any liability on the part of Lessor, and in the event of such termination Lessor shall be obligated only to return to Lessee any rent paid in advance hereunder, which obligation shall exist only in the event that at the time of such termination Lessee shall not be in default in respect to any of the provisions hereof.

12. In the event of any termination of that certain Operator's Sales Contract executed concurrently herewith by and between the parties hereto, covering the purchase and sale of certain petroleum products for resale from the premises demised hereby, Lessor shall be privileged to terminate this lease by means of a seven (7) day notice in writing to Lessee.

13. Any demands or notices required or permitted to be served hereunder shall be deemed properly served when deposited, postage prepaid, registered, in the United States mail, addressed to Lessee at the address of the demised premises, or to Lessor at 555 South Flower Street, Los Angeles 13, California. In lieu of mailing, as aforesaid, such demands and notices may be personally served upon Lessee.

14. This agreement shall not be binding upon Lessor until executed by a duly authorized officer or agent of Lessor and a fully executed copy hereof delivered to Lessee.

IN WITNESS WHEREOF, the parties have executed this lease as of the date first hereinabove written.

RICHFIELD OIL CORPORATION,

By.....
Lessor

.....

.....
Lessee

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Government Exhibit 5

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RICHFIELD OIL CORPORATION
SALES CONTRACT

THIS AGREEMENT, executed this day of , 19 , between

RICHFIELD OIL CORPORATION, hereinafter referred to as "Seller", and

hereinafter referred to as "Buyer",

WITNESSETH:

1. Seller agrees to sell and deliver to Buyer and Buyer agrees to purchase from Seller, as ordered by Buyer during the term hereof, the following petroleum products, in quantities not greater than the maximum nor less than the minimum amounts hereinbelow specified for the respective products, the same to be taken in fairly equal monthly quantities.

	Maximum	Minimum
GASOLINE	gals.	gals.
LUBRICATING OILS	gals.	gals.
GREASES	lbs.	lbs.

2. The prices for products sold and delivered hereunder shall be Seller's posted prices to Service Station Dealers in effect at time and place of delivery. Seller's posted prices to Service Station Dealers as of the date hereof at the point of delivery specified in Paragraph "4" are as set forth in Schedule "A" hereof. Said prices shall be subject to change by Seller from time to time during the term hereof.

3. The products agreed to be sold and delivered hereunder are for sale to the retail trade and not for consumption. Should Seller at any time during the term hereof elect to discontinue sale to the retail trade of any of the products listed in Schedule "A" hereof, this agreement shall terminate as to such products but shall remain effective for all other purposes.

4. Deliveries hereunder shall be made to Buyer's service station at

5. This agreement shall commence as of the day of , 19 , and shall continue for a period of one year thereafter; provided, however, that Seller may terminate the same at any time by a five (5) days' notice in writing directed to Buyer.

6. In addition to the prices herein provided, Buyer shall pay Seller any and all taxes, increase in taxes or new taxes not included in the prices herein specified, on the products covered by this agreement and or the production, manufacture, transportation, sale, use, and or other handling of said products.

7. Buyer shall pay Seller cash on delivery for all products delivered hereunder, unless otherwise mutually agreed upon from time to time. No allowance of credit shall prevent Seller from returning at any time at Seller's election to a cash on delivery basis.

8. Failure or refusal of Buyer to comply with the terms of this agreement or to promptly make payment when due on all products delivered hereunder shall entitle Seller to suspend deliveries until any breach is remedied or payment is made, or to forthwith terminate this agreement.

9. In the event that performance on the part of Seller of any or all of the terms of this agreement is prevented or impeded in whole or in part, or in the event that the cost of such performance by Seller is abnormally increased, by reason of acts of God, acts of public administrators, war, governmental regulations or restrictions, strikes, labor disturbances, perils of the sea, riots, fires, floods, earthquakes, embargoes, inability to obtain supplies or labor, loss or shortage of products during manufacturing or transportation facilities and or any other cause or causes beyond Seller's control, performance by Seller hereunder shall be excused without any liability whatever on its part.

10. If Buyer purchases Ethyl or ethyl-treated gasoline hereunder, he shall sell said gasoline in accordance with the rules and regulations prescribed by the Surgeon General of the United States and other Health Officers, and shall procure the licenses required by the Ethyl Gasoline Corporation. Unless Buyer complies with the terms and provisions of this paragraph, Seller shall not be obligated to sell or deliver Ethyl or ethyl-treated gasoline hereunder.

11. Neither this agreement nor any of the rights, powers or privileges of Buyer hereunder shall be assignable by Buyer without written consent of Seller.

12. Any demands or notices required or permitted to be served hereunder shall be deemed properly served when deposited, postage prepaid, registered, in the United States mail, addressed to Buyer at the address specified in Paragraph "4" hereof, or to Seller at 555 South Flower Street, Los Angeles, California. In lieu of mailing, as aforesaid, such demands and notices may be personally served upon Buyer.

13. Buyer hereby acknowledges execution hereof without reliance upon any representations, warranties, promises or assurances other than those written herein.

IN WITNESS WHEREOF the parties have executed this agreement the day and year first hereinabove written.

RICHFIELD OIL CORPORATION

By

Seller

Buyer

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RICHFIELD OIL CORPORATION
PAINTING AGREEMENT

THIS AGREEMENT, made this .....day of .....19 ....., between RICHFIELD OIL CORPORATION, herein called "Richfield", and ..... herein called "Dealer",

WITNESSETH:

THAT WHEREAS, Richfield as Seller, and Dealer as Buyer, have entered into a Sales Contract dated the .....day of ....., 19....., for the term of one year commencing on the .....day of ....., 19..., under the terms of which Dealer as Buyer thereunder agreed to purchase and receive certain stated quantities of Richfield gasolines, lubricating oils and greases for resale at Dealer's service station located at .....; and

WHEREAS, Dealer desires to have the service station buildings at said location painted in Richfield colors and designs and Richfield is willing, on certain conditions hereinafter set forth, to furnish the necessary work, labor and material and to paint the aforesaid service station buildings;

NOW, THEREFORE, in consideration of the premises and of the covenants of the parties hereto, it is agreed:

1. That Richfield shall paint the aforesaid service station buildings at said location and furnish the necessary work, labor and materials therefor at a maximum cost of $.....

2. That Dealer shall pay to Richfield at the time of and upon any termination by Richfield of the above mentioned Sales Contract by reason of the breach by Dealer as Buyer thereunder of any of the terms, covenants or conditions therein contained, the sum of $ ..... for said work, labor and materials, together with a reasonable sum as attorneys fees in the event suit is instituted by Richfield to collect said sum, or any part thereof.

3. That in the event Dealer performs all of the terms, covenants and agreements contained in said Sales Contract above described for the full term thereof Dealer shall be under no obligation to pay said sum set forth in paragraph "2" hereof, or any part thereof; and Richfield agrees that in such event Dealer shall be discharged from said debt.

4. That Dealer, upon any expiration or sooner termination of said Sales Contract above described, shall immediately remove from the premises hereinbefore specified all advertising, insignia, painting and/or colors indicating the dispensing or sale from said premises of Richfield products, and in the event Dealer fails so to remove said advertising, insignia, painting and/or colors within five (5) days after such expiration or sooner termination of said Sales Contract Richfield shall have and is hereby granted the right to enter upon said premises and to repaint any buildings, pumps, tanks or other equipment thereon, to change the color or colors thereof and/or to eliminate signs and insignia therefrom and/or otherwise to remove all things which in the opinion of Richfield are indicative of the sale of Richfield products thereat; and Dealer agrees to pay to Richfield on demand the entire sum so expended by Richfield in pursuance of the rights herein granted, which said obligation of Dealer shall be in addition to that provided for in paragraph "2" hereof and shall not be discharged under the provisions of paragraph "3" hereof.

5. It is expressly understood and agreed that the Sales Contract above described dated the .....day of ....., 193..., is hereby extended to and including the .....day of ....., 193..., upon all of the terms and provisions therein contained and subject, however, to termination by Richfield at any time during such term as extended upon five (5) days' written notice to Dealer, and it is further expressly understood and agreed that all of the terms and provisions of paragraphs "1" to "4" inclusive, of this agreement shall be binding upon the parties hereto and their successors and assigns during the term of said Sales Contract above described, as extended under the provisions of this paragraph "5".

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first hereinabove written.

RICHFIELD OIL CORPORATION

By .....

.....

.....
Dealer

Government Exhibit 5B

RICHFIELD OIL CORPORATION
SALES CONTRACT

THIS AGREEMENT, executed this _____ day of _____, 19____, between RICHFIELD OIL CORPORATION, hereinafter referred to as "Seller", and _____ hereinafter referred to as "Buyer",

WITNESSETH: That

1. Seller agrees to sell and deliver to Buyer and Buyer agrees to purchase from Seller, as ordered by Buyer during the term hereof, the following petroleum products, in yearly quantities not greater than the maximum nor less than the minimum amounts hereinbelow specified for the respective products, the same to be taken in fairly equal monthly quantities:

	Maximum	Minimum
GASOLINE	gals.	gals.
LUBRICATING OILS	gals.	gals.
GREASES	lbs.	lbs.

2. This agreement shall commence as of the _____ day of _____, 19____, and shall extend to and including the _____ day of _____, 19____; subject, however, to termination by Seller at any time during the term hereof by means of a five (5) day notice in writing to Buyer.

3. The products agreed to be sold and delivered hereunder are for resale by Buyer to the retail trade. Buyer agrees not to resell any of the products delivered hereunder which bear, or the label or container of which bears, the trade mark, brand or name of Seller or which is sold through pumps or other vending equipment bearing the trade mark, brand or name of Seller, except at the price designated by Seller as the resale price of such product. Seller shall have the right to change the designated resale price of any of the products to be delivered hereunder at any time or from time to time during the term hereof by written or oral notice directed to Buyer. Attached hereto marked "Schedule A" and hereby made a part of this contract is a schedule of the products to be delivered hereunder as of the date of the commencement of this contract. Set opposite the name of each gasoline listed in Schedule A is a price which Seller hereby designates as the resale price of such gasoline effective at the commencement of this contract and until further notice. Seller reserves the right to designate resale prices for all other products listed in said Schedule A for which prices are not designated. Seller shall have the right at any time and from time to time during the term hereof to add to the products listed on said Schedule A any other brand of gasoline, lubricating oils and greases which it may hereafter produce and manufacture and to designate a resale price therefor; and Seller shall also have the right at any time and from time to time during the term hereof to discontinue sale of any of the products listed in said Schedule A and in such event this agreement shall terminate as to such products but shall remain effective for all other purposes.

4. The prices to be paid by Buyer to Seller for the several grades of gasoline sold and delivered hereunder shall be the designated resale prices thereof at the time and place of delivery to Buyer less 4¢ per gallon in respect of Seller's Ethyl gasoline, 4¢ per gallon in respect of Seller's first grade non-premium gasoline (now known as "Hi-Octane") and 3¢ per gallon in respect of any gasoline of a grade inferior to Seller's first grade non-premium gasoline.

Prices to be paid by Buyer to Seller for products other than gasoline delivered hereunder shall be Seller's posted or list prices to service station dealers in effect at the time and place of delivery. Seller's posted or list prices to service

RICHFIELD OIL CORPORATION
SALES CONTRACT

THIS AGREEMENT, executed this _____ day of _____, 19____, between RICHFIELD OIL CORPORATION, hereinafter referred to as "Seller", and _____ hereinafter referred to as "Buyer",

WITNESSETH: That

1. Seller agrees to sell and deliver to Buyer and Buyer agrees to purchase from Seller, as ordered by Buyer during the term hereof, the following petroleum products, in yearly quantities not greater than the maximum nor less than the minimum amounts hereinbelow specified for the respective products, the same to be taken in fairly equal monthly quantities:

	Maximum	Minimum
GASOLINE	gals.	gals.
LUBRICATING OILS	gals.	gals.
GREASES	lbs.	lbs.

2. This agreement shall commence as of the _____ day of _____, 19____, and shall extend to and including the _____ day _____, 19____; subject, however, to termination by Seller at any time during the term hereof by means of a five (5) day notice in writing to Buyer.

3. The products agreed to be sold and delivered hereunder are for resale by Buyer to the retail trade. Buyer agrees not to resell any of the products delivered hereunder which bear, or the label or container of which bears, the trade mark, brand or name of Seller or which is sold through pumps or other vending equipment bearing the trade mark, brand or name of Seller, except at the price designated by Seller as the resale price of such product. Seller shall have the right to change the designated resale price of any of the products to be delivered hereunder at any time or from time to time during the term hereof by written or oral notice directed to Buyer. Attached hereto marked "Schedule A" and hereby made a part of this contract is a schedule of the products to be delivered hereunder as of the date of the commencement of this contract. Set opposite the name of each gasoline listed in Schedule A is a price which Seller hereby designates as the resale price of such gasoline effective at the commencement of this contract and until further notice. Seller reserves the right to designate resale prices for all other products listed in said Schedule A for which prices are not designated. Seller shall have the right at any time and from time to time during the term hereof to add to the products listed on said Schedule A any other brand of gasoline, lubricating oils and greases which it may hereafter produce and manufacture and to designate a resale price therefor; and Seller shall also have the right at any time and from time to time during the term hereof to discontinue sale of any of the products listed in said Schedule A and in such event this agreement shall terminate as to such products but shall remain effective for all other purposes.

4. The prices to be paid by Buyer to Seller for the several grades of gasoline sold and delivered hereunder shall be the designated resale prices thereof at the time and place of delivery to Buyer less 4¢ per gallon in respect of Seller's Ethyl gasoline, 4¢ per gallon in respect of Seller's first grade non-premium gasoline (now known as "Hi-Octane") and 3¢ per gallon in respect of any gasoline of a grade inferior to Seller's first grade non-premium gasoline.

Prices to be paid by Buyer to Seller for products other than gasoline delivered hereunder shall be Seller's posted or list prices to service station dealers in effect at the time and place of delivery. Seller's posted or list prices to service station dealers in respect to such products are set forth in Schedule A hereof. The posted price of any such product shall be subject to change by Seller at any time and from time during the term hereof.

5. Deliveries hereunder shall be made to Buyer's service station at _____ in the City of _____ State of _____. All gasoline sold hereunder shall be delivered by tank truck, tank truck and trailer, or such other method of delivery as Seller shall select, and Buyer agrees to maintain storage, which shall conform with all laws and governmental regulations, into which said gasoline may be delivered.

6. In addition to the prices herein provided, Buyer shall pay Seller any and all taxes, increase in taxes or new taxes not included in the prices herein specified, on the products covered by this agreement and/or (on and/or measured by the production, manufacture, transportation, sale, use and/or other handling of said products.

7. Buyer shall pay Seller cash on delivery for all products delivered hereunder unless otherwise mutually agreed upon from time to time. No allowance of credit shall prevent Seller from returning at any time, at Seller's election, to a cash on delivery basis.

8. Failure or refusal of Buyer to comply with the terms of this agreement or to promptly make payment when due on all products delivered hereunder shall entitle Seller to suspend deliveries until any breach is remedied or payment is made, or to forthwith terminate this agreement.

9. In the event that performance on the part of Seller of any or all of the terms of this agreement is prevented or impeded in whole or in part, or in the event that the cost of such performance by Seller is abnormally increased by reason of acts of God, acts of public administrators, war, governmental regulations or restrictions, strikes, labor disturbances, perils of the sea, riots, fires, floods, earthquakes, embargoes, inability to obtain supplies or labor, loss or shortage of producing, manufacturing or transportation facilities and/or any other cause or causes beyond Seller's control, performance by Seller hereunder shall be excused without any liability whatever on its part.

10. If Buyer purchases Ethyl or Ethyl-treated gasoline hereunder, he shall sell said gasoline in accordance with the rules and regulations prescribed by the Surgeon General of the United States and other health officers, and shall procure the licenses required by the Ethyl Gasoline Corporation. Unless Buyer complies with the terms and provisions of this paragraph, Seller shall not be obligated to sell or deliver Ethyl or Ethyl-treated gasoline hereunder.

11. Neither this agreement nor any of the rights, powers or privileges of Buyer hereunder shall be assignable by Buyer without the written consent of Seller.

12. Any demands or notices required or permitted to be served hereunder shall be deemed properly served when deposited, postage prepaid, registered, in the United States mail, addressed to Buyer at the address specified in paragraph 5 hereof, or to Seller at 555 South Flower Street, Los Angeles, California. In lieu of mailing, as aforesaid, such demands and notices may be personally served upon Buyer.

13. Buyer hereby acknowledges execution hereof without reliance upon any representations, warranties, promises or assurances other than those written herein.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first hereinabove written.

RICHFIELD OIL CORPORATION,

By _____
Seller

_____
Buyer

Government Exhibit 5-C

RICHFIELD OIL CORPORATION

PAINTING AGREEMENT

THIS AGREEMENT, made this ___ day of ___, 19__, between RICHFIELD OIL CORPORATION, herein called "Richfield", and ___ herein called "Dealer".

WITNESSETH:

That WHEREAS Richfield as Seller and Dealer as Buyer have entered into a Sales Contract dated the ___ day of ___, 19__, for the term commencing on the ___ day of ___, 19__, and extending to and including the ___ day of ___, 19__, under the terms of which Dealer as Buyer thereunder agreed to purchase and receive Richfield gasolines, lubricants and greases for resale at Dealer's service station located at ___; and

WHEREAS Dealer desires to have the service station buildings at said location painted in Richfield colors and insignia and Richfield is willing, on certain conditions hereinafter set forth, to furnish the necessary work, labor and material and to paint the aforesaid service station buildings;

NOW, THEREFORE, in consideration of the premises and of the covenants of the parties hereto, it is agreed:

1. That Dealer shall remove from the surface of the service station which is to be painted all signs and insignia, and upon completion of the painting of said service station by Richfield shall not place upon or over the painted surfaces any advertising sign, trade mark, insignia or any other matter without first procuring the consent and approval of Richfield.

2. That Richfield shall paint the aforesaid service station buildings at the above location and furnish the necessary work, labor and materials therefor at a maximum cost of $ ___.

3. That Dealer shall pay to Richfield, at the time of any breach of the terms of paragraph 1 of this agreement or at the time of and upon any termination by Richfield of the above mentioned Sales Contract by reason of the breach by Dealer as Buyer thereunder of any of the terms, covenants or conditions therein contained, the sum of $___ for said work, labor and materials, together with a reasonable sum as attorney's fees in the event suit is instituted by Richfield to collect said sum, or any part thereof.

4. That in the event Dealer performs all of the terms, covenants and agreements contained in said Sales Contract above described for the full term thereof, and faithfully complies with the provisions of paragraph numbered 1 hereof, Dealer shall be under no obligation to pay said sum set forth in paragraph numbered 3 hereof, or any part thereof; and Richfield agrees that in such event Dealer shall be discharged from said debt.

5. That Dealer, upon any expiration or sooner termination of said Sales Contract above described, shall immediately remove from the premises hereinabove specified all advertising, insignia, painting and/or colors indicating the dispensing or sale from said premises of Richfield products, and in the event Dealer fails so to remove said advertising, insignia, painting and/or colors within five (5) days after such expiration or sooner termination of said Sales Contract, Richfield shall have and is hereby granted the right to enter upon said premises and to repaint any buildings, pumps, tanks or other equipment thereon, to change the color or colors thereof and/or to eliminate signs and insignia therefrom and/or otherwise to remove all things which in the opinion of Richfield are indications of the sale of Richfield products thereat; and Dealer agrees to pay to Richfield on demand the entire sum so expended by Richfield in pursuance of the rights herein granted, which said obligations of Dealer shall be in addition to that provided for in paragraph "3" hereof and shall not be discharged under the provisions of paragraph "4" hereof.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first hereinabove written.

RICHFIELD OIL CORPORATION,

By ___

585

___
Dealer

Government Exhibit 5-D

Form 337 Rev.

RICHFIELD OIL CORPORATION
SALES CONTRACT

THIS AGREEMENT, executed this _____ day of _____, 19____, betw

RICHFIELD OIL CORPORATION, hereinafter referred to as "Seller", and _____

_____

hereinafter referred to as "Buyer",

WITNESSETH: That

1. Seller agrees to sell and deliver to Buyer and Buyer agrees to purchase from Seller, as ordered by Buyer d ing the term hereof, the following petroleum products in calendar monthly quantities not greater than the maxim ner less than the minimum amounts hereinbelow specified for the respective products. For fractional monthly peri said amounts will be duly prorated.

	Minimum	Maximum
GASOLINES	_____ gals.	_____ gals.
LUBRICATING OILS	_____ gals.	_____ gals.
GREASES	_____ lbs.	_____ lbs.

The above quantities represent those to be purchased and sold under normal business conditions and in the eve because of climatic or other conditions Buyer's sales are abnormally less during certain months of the year, the afo said quantities will be proportionately reduced for said months based upon previous business experience of Buye station or of business generally in the vicinity in the event Buyer's station has had no previous business experience.

The obligation of Seller to deliver the minimum quantities above specified shall at all times be subject to Selle right to be exercised within its sole and exclusive discretion with or without notice to discontinue, restrict and/or curt the delivery of and/or to change the specifications of any product in the event of shortage of products, crude, ba materials, additives, transportation, or labor and/or for any reason similar or dissimilar to the foregoing. Failure Seller to fill any order or orders by reason of the aforesaid causes shall reduce the purchase obligations of Buyer that extent. In the event that Seller is unable to make delivery to all of its customers by reason of any of the cau set forth in this paragraph and yet is able to make some deliveries, its failure to make deliveries in whole or in part Buyer even while making deliveries of the same or similar commodities to other buyers or consignees or to its own bu storage and distributing plants, agents and distributors for sale and delivery to the general public, shall not constitu a default by Seller.

2. This agreement shall commence as of the _____ day of _____, 19____, and sh extend to and including the _____ day of _____, 19____; subject, however, to termination either party at any time during the term hereof by means of a thirty (30) day notice in writing to the other part

3. The products agreed to be sold and delivered hereunder are for resale by Buyer to the retail trade. Buy agrees not to resell any of the products delivered hereunder which bear, or the label or container of which bears, t trade mark, brand or name of Seller or which is sold through pumps or other vending equipment bearing the trade mar brand or name of Seller, except at the price designated by Seller as the resale price of such product. Seller sh have the right to change the designated resale price of any of the products to be delivered hereunder at any time or fro time to time during the term hereof by written or oral notice directed to Buyer. Attached hereto marked "Schedule A and hereby made a part of this contract is a schedule of the products to be delivered hereunder as of the date of t commencement of this contract. Set opposite the name of each gasoline listed in Schedule A is a price which Sell hereby designates as the resale price of such gasoline effective at the inception of this contract and until furth notice. Seller reserves the right to designate resale prices for all other products listed in said Schedule "A" for whic prices are not designated. Seller shall have the right at any time and from time to time during the term hereof to a to the products listed on said Schedule "A" any other brand of gasoline, lubricating oils and greases which it may hav after produce and manufacture and to designate a resale price therefor; and Seller shall also have the right at any tim and from time to time during the term hereof to discontinue sale of any of the products listed in said Schedule A an in such event this agreement shall terminate as to such products but shall remain effective for all other purposes.

4. The prices payable by Buyer to Seller under the provisions of this instrument (Form 337) for the two grad of gasoline to be sold and delivered hereunder shall be the designated resale prices thereof at the time and place d delivery to Buyer, less 4¢ per gallon.

Prices to be paid by Buyer to Seller for products other than the aforesaid two grades of gasoline delivered here under shall be Seller's posted or list prices to service station dealers in effect at the time and place of delivery. Seller posted or list prices to service station dealers in respect to such products are set forth in Schedule "A" hereof. Th posted prices of any such product shall be subject to change by Seller at any time and from time to time during th term hereof.

5. Deliveries hereunder shall be made to Buyer's service station at _____

_____

State of _____. All gasoline sold hereunder shall be delivered by tank truck, tank truck an trailer, or such other method of delivery as Seller shall select, and Buyer agrees to maintain storage, which shall conform with all laws and governmental regulations, into which said gasoline may be delivered.

6. In addition to the prices herein provided, Buyer shall pay Seller any and all taxes, increase in taxes or new tax not included in the prices herein specified, on the products covered by this agreement and/or on and/or measured b the production, manufacture, transportation, sale, use and/or other handling of said products.

7. Buyer shall pay Seller cash on delivery for all products delivered hereunder unless otherwise mutually agree upon from time to time. No allowance of credit shall prevent Seller from returning at any time, at Seller's election, t a cash on delivery basis.

8. Failure or refusal of Buyer to comply with the terms of this agreement or to promptly make payment when due on all products delivered hereunder shall entitle Seller to suspend deliveries until any breach is remedied or payment is made, or to forthwith terminate this agreement.

9. In the event that performance on the part of the Seller of any or all of the terms of this agreement is prevented or impeded in whole or in part, or in the event that the cost of such performance by Seller is abnormally increased by reason of acts of God, acts of public administration, war, governmental regulations or restrictions, strikes, labor disturbances, perils of the sea, riots, fires, floods, earthquakes, embargoes, inability to obtain supplies or labor, loss or shortage of producing, manufacturing or transportation facilities and/or any other cause or causes beyond Seller's control, or in the event, by means of statute, law, ordinance, order, mandate, decision, judgment, decree, rule or regulation of any governmental body, board, tribunal, court or official, whether specifically directed against Seller or Buyer hereunder or this contract or operations hereunder, or otherwise, performance hereunder is interfered with or regulated, or any loss or disadvantage is suffered by Seller due to an enforced or resultant reduction in prices or incurrence of liability or penalty under or in connection with any other contract because of the existence of this contract, performance by Seller hereunder shall be excused, and/or Seller shall be privileged to forthwith terminate this agreement without any liability whatever on its part.

10. If Buyer purchases Ethyl or Ethyl-treated gasoline hereunder, he shall sell said gasoline in accordance with the rules and regulations prescribed by the Surgeon General of the United States and other health officers. Unless Buyer complies with the terms and provisions of this paragraph, Seller shall not be obligated to sell or deliver Ethyl or Ethyl-treated gasoline hereunder.

11. Neither this agreement nor any of the rights, powers or privileges of Buyer hereunder shall be assignable by Buyer without the written consent of Seller.

12. Any demands or notices required or permitted to be served hereunder shall be deemed properly served when deposited, postage prepaid, registered, in the United States mail, addressed to Buyer at the address specified in paragraph 5 hereof, or to Seller at 555 South Flower Street, Los Angeles 13, California. In lieu of mailing, as aforesaid, such demands and notices may be personally served upon Buyer.

13. Buyer hereby acknowledges execution hereof without reliance upon any representations, warranties, promises or assurances other than those written herein.

14. This agreement terminates as of the date of commencement hereof all contracts between the parties hereto or their assignors covering sale and delivery of petroleum products to Buyer's service station described in paragraph 5 hereof.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first hereinabove written.

RICHFIELD OIL CORPORATION

By_____
Seller

_____
Buyer

Government Exhibit 5-E

Form 59 10M 8-41

RICHFIELD OIL CORPORATION

PAINTING AGREEMENT

THIS AGREEMENT, made this _____ day of _____, 19____, between RICHFIELD OIL CORPORATION, herein called "Richfield", and _____, herein called "Dealer",

WITNESSETH:

That WHEREAS Richfield as Seller and Dealer as Buyer have entered into a Sales Contract dated the _____ day of _____, 19____, for the term commencing on the _____ day of _____, 19____, and extending to and including the _____ day of _____, 19____, under the terms of which Dealer as Buyer thereunder agreed to purchase and receive Richfield gasolines, lubricating oils and greases for resale at Dealer's service station located at _____; and

WHEREAS Dealer desires to have the service station building at said location painted in Richfield colors and insignia and Richfield is willing, on certain conditions hereinafter set forth, to furnish, the necessary work, labor and material and to paint the aforesaid service station buildings;

NOW, THEREFORE, in consideration of the premises and of the covenants of the parties hereto, it is agreed:

1. That Dealer shall remove from the surface of the service station which is to be painted all signs, insignia, and obstructions, so that the obligations of Richfield hereunder may be performed with a minimum of hinderance.

2. That Richfield shall paint the aforesaid service station buildings at the above location and furnish the necessary work, labor and materials therefor at a cost of not less than $_____ nor exceeding $_____

3. That Dealer shall pay to Richfield, at the time of any breach of the terms of paragraph 1 of this agreement or at the time of and upon any termination by Richfield of the above mentioned Sales Contract by reason of the breach by Dealer as Buyer thereunder of any of the terms, covenants or conditions therein contained or at the time of and upon any termination by Dealer of the above mentioned Sales Contract by reason of the exercise by Dealer as Buyer thereunder of any termination privilege therein reserved other than for default of Seller, the actual sum expended by Richfield under paragraph 2 hereof, not exceeding, however, the maximum price therein set forth, together with a reasonable sum as attorney's fees in the event suit is instituted by Richfield to collect said sum, or any part thereof.

4. That in the event Dealer performs all of the terms, covenants and agreements contained in said Sales Contract above described for the full term thereof, and faithfully complies with the provisions of paragraph numbered 1 hereof, Dealer shall be under no obligation to pay the obligation set forth in paragraph numbered 3 hereof, or any part thereof; and Richfield agrees that in such event Dealer shall be discharged from said debt.

5. That Dealer, upon any expiration or sooner termination of said Sales Contract above described, shall immediately remove from the premises hereinabove specified all advertising, insignia, painting and/or colors indicating the dispensing or sale from said premises of Richfield products, and in the event Dealer fails so to remove said advertising, insignia, painting and/or colors within five (5) days after such expiration or sooner termination of said Sales Contract, Richfield shall have and is hereby granted the right to enter upon said premises and to repaint any buildings, pumps, tanks or other equipment thereon, to change the color or colors thereof and/or to eliminate signs and insignia therefrom and/or otherwise to remove all things which in the opinion of Richfield are indications of the sale of Richfield products thereat; and Dealer agrees to pay to Richfield on demand the entire sum so expended by Richfield in pursuance of the rights herein granted, which said obligations of Dealer shall be in addition to that provided for in paragraph "3" hereof and shall not be discharged under the provisions of paragraph "4" hereof.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first hereinabove written.

RICHFIELD OIL CORPORATION,

By _____

_____
Dealer

Government Exhibit 5F

RICHFIELD OIL CORPORATION

PAINTING AGREEMENT

THIS AGREEMENT, made this _____ day of _____, 19____, between RICHFIELD OIL CORPORATION, herein called "Richfield", and _____, herein called "Dealer",

WITNESSETH:

That WHEREAS Richfield as Seller and Dealer as Buyer have entered into a Sales Contract dated the _____ day of _____, 19____, for the term commencing on the _____ day of _____, 19____, and extending to and including the _____ day of _____, 19____, under the terms of which Dealer as Buyer thereunder agreed to purchase and receive Richfield gasolines, lubricating oils and greases for resale at Dealer's service station located at _____; and

WHEREAS Dealer desires to have the service station building at said location painted in Richfield colors and insignia and Richfield is willing, on certain conditions hereinafter set forth, to furnish, the necessary work, labor and material and to paint the aforesaid service station buildings;

NOW, THEREFORE, in consideration of the premises and of the covenants of the parties hereto, it is agreed:

1. That Dealer shall remove from the surface of the service station which is to be painted all signs, insignia, and obstructions, so that the obligations of Richfield hereunder may be performed with a minimum of hindrance.

2. That Richfield shall paint the aforesaid service station buildings at the above location and furnish the necessary work, labor and materials therefor at a cost of not less than $_____ nor exceeding $_____

3. That Dealer shall pay to Richfield, at the time of any breach of this agreement or at the time of and upon any termination by Richfield of the above mentioned Sales Contract by reason of the breach by Dealer as Buyer thereunder of any of the terms, covenants or conditions therein contained or at the time of and upon any termination by Dealer of the above mentioned Sales Contract by reason of the exercise by Dealer as Buyer thereunder of any termination privilege therein reserved other than for default of Seller, the actual sum expended by Richfield under paragraph 2 hereof, not exceeding, however, the maximum price therein set forth, together with a reasonable sum as attorney's fees in the event suit is instituted by Richfield to collect said sum, or any part thereof.

4. That in the event Dealer performs all of the terms, covenants and agreements contained in said Sales Contract above described for the full term thereof, and faithfully complies with the provisions of paragraph numbered 1 hereof, Dealer shall be under no obligation to pay the obligation set forth in paragraph numbered 3 hereof, or any part thereof; and Richfield agrees that in such event Dealer shall be discharged from said debt.

5. That Dealer, upon any expiration or sooner termination of said Sales Contract above described, shall immediately remove from the premises hereinabove specified all advertising, insignia, painting and or colors indicating the dispensing or sale from said premises of Richfield products, and in the event Dealer fails so to remove said advertising, insignia, painting and/or colors within five (5) days after such expiration or sooner termination of said Sales Contract, Richfield shall have and is hereby granted the right to enter upon said premises and to repaint any buildings, pumps, tanks or other equipment thereon, to change the color or colors thereof and/or to eliminate signs and insignia therefrom and/or otherwise to remove all things which in the opinion of Richfield are indications of the sale of Richfield products thereat; and Dealer agrees to pay to Richfield on demand the entire sum so expended by Richfield in pursuance of the rights herein granted, which said obligations of Dealer shall be in addition to that provided for in paragraph "3" hereof and shall not be discharged under the provisions of paragraph "4" hereof.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first hereinabove written.

RICHFIELD OIL CORPORATION,

By _____

_____ Dealer

Government Exhibit 5-G

RICHFIELD OIL CORPORATION
SALES CONTRACT

THIS AGREEMENT, executed this _____ day of _____, 19____, bet

RICHFIELD OIL CORPORATION, hereinafter referred to as "Seller," and _____

_____

hereinafter referred to as "Buyer,"

WITNESSETH: That

1. Seller agrees to sell and deliver to Buyer and Buyer agrees to purchase from Seller, as ordered by Buyer during the t hereof, the following petroleum products in calendar monthly quantities not greater than the maximum nor less than the minim amounts hereinbelow specified for the respective products. For fractional monthly periods said amounts will be duly prorated.

	Minimum	Maximum
GASOLINES	_____ gals.	_____ gals.
LUBRICATING OILS	_____ gals.	_____ gals.
GREASES	_____ lbs.	_____ lbs.

The above quantities represent those to be purchased and sold under normal business conditions and in the event, becaus climatic or other conditions, Buyer's sales are abnormally less during certain months of the year, the aforesaid quantities wil proportionately reduced for said months based upon previous business experience of Buyer's station or of business generally in vicinity in the event Buyer's station has had no previous business experience.

The obligation of Seller to deliver the minimum quantities above specified shall at all times be subject to Seller's right t exercised within its sole and exclusive discretion with or without notice to discontinue, restrict and/or curtail the delivery of an to change the specifications of any product in the event of shortage of products, crude, base materials, additives, transportatio labor and/or for any reason similar or dissimilar to the foregoing. Failure of Seller to fill any order or orders by reason of aforesaid causes shall reduce the purchase obligations of Buyer to that extent. In the event that Seller is unable to make deliver all of its customers by reason of any of the causes set forth in this paragraph and yet is able to make some deliveries, its failu make deliveries in whole or in part to Buyer even while making deliveries of the same or similar commodities to other buyer consignees or to its own bulk storage and distributing plants, agents and distributors for sale and delivery to the general public, not constitute a default by Seller.

2. This agreement shall commence as of the _____ day of _____, 19____, and extend to and including the _____ day of _____, 19____; subject, however, to terminatio either party at any time during the term hereof by means of a thirty (30) day notice in writing to the other party.

3. The products agreed to be sold and delivered hereunder are for resale by Buyer to the retail trade. Buyer agrees n resell any of the products delivered hereunder which bear, or the label or container of which bears, the trade mark, brand or of Seller or which is sold through pumps or other vending equipment bearing the trade mark, brand or name of Seller, at prices than those designated by Seller as the resale prices of such products. Seller shall have the right to change the designated resale p of any of the products to be delivered hereunder at any time or from time to time during the term hereof by written or oral directed to Buyer. Attached hereto marked Schedule "A" and hereby made a part of this contract is a schedule of the produc be delivered hereunder as of the date of the commencement of this contract. Set opposite the name of each gasoline listed in Sch "A" is a price which Seller hereby designates as the resale price of such gasoline effective at the execution of this contract and further notice. Seller reserves the right to designate resale prices for all other products listed in said Schedule "A" for which are not designated. Seller shall have the right at any time and from time to time during the term hereof to add to the pro listed on said Schedule "A" any other brand of gasoline, lubricating oils and greases which it may hereafter produce and manufa and to designate a resale price therefor; and Seller shall also have the right at any time and from time to time during the hereof to discontinue sale of any of the products listed in said Schedule "A" and in such event this agreement shall terminate such products but shall remain effective for all other purposes.

4. The prices payable by Buyer to Seller under the provisions of this instrument (Form 337) for the two grades of ga to be sold and delivered hereunder shall be the designated resale prices thereof at the time and place of delivery to Buyer 4¢ per gallon.

Prices to be paid by Buyer to Seller for products other than the aforesaid two grades of gasoline delivered hereunder sh Seller's posted or list prices to service station dealers in effect at the time and place of delivery. Seller's posted or list pric service station dealers in respect to such products are set forth in Schedule "A" hereof. The posted price of any such product be subject to change by Seller at any time and from time to time during the term hereof.

5. Deliveries hereunder shall be made to Buyer's service station at _____

_____

State of _____. All gasoline sold hereunder shall be delivered by tank truck, tank truck and or such other method of delivery as Seller shall select, and Buyer agrees to maintain storage, which shall conform with all la governmental regulations, into which said gasoline may be delivered.

6. In addition to the prices herein provided, Buyer shall pay Seller any and all taxes, increase in taxes or new taxes cluded in the prices herein specified, on the products covered by this agreement and/or on and/or measured by the production, facture, transportation, sale, use and/or other handling of said products.

7. Buyer shall pay Seller cash on delivery for all products delivered hereunder unless otherwise mutually agreed upon fro to time. No allowance of credit shall prevent Seller from returning at any time, at Seller's election, to a cash on delivery ba

8. Failure or refusal of Buyer to comply with the terms of this agreement or to promptly make payment when due on all p delivered hereunder shall entitle Seller to suspend deliveries until any breach is remedied or payment is made, or to forthwith nate this agreement.

5

9. In the event that performance on the part of the Seller of any or all of the terms of this agreement is prevented or impeded in whole or in part, or in the event that the cost of such performance by Seller is abnormally increased by reason of acts of God, acts of public administrators, war, governmental regulations or restrictions, strikes, labor disturbances, perils of the sea, riots, fires, floods, earthquakes, embargoes, inability to obtain supplies or labor, loss or shortage of producing, manufacturing or transportation facilities and/or any other cause or causes beyond Seller's control, or in the event, by means of statute, law, ordinance, order, mandate, decision, judgment, decree, rule or regulation of any governmental body, board, tribunal, court or official, whether specifically directed against Seller or Buyer hereunder or this contract or operations hereunder, or otherwise, performance hereunder is interfered with or regulated, or any loss or disadvantage is suffered by Seller due to an enforced or resultant reduction in prices or incurrence of liability or penalty under or in connection with any other contract because of the existence of this contract, performance by Seller hereunder shall be excused, and/or Seller shall be privileged to forthwith terminate this agreement without any liability whatever on its part.

10. If Buyer purchases Ethyl or Ethyl-treated gasoline hereunder, he shall sell said gasoline in accordance with the rules and regulations prescribed by the Surgeon General of the United States and other health officers. Unless Buyer complies with the terms and provisions of this paragraph, Seller shall not be obligated to sell or deliver Ethyl or Ethyl-treated gasoline hereunder.

11. Neither this agreement nor any of the rights, powers or privileges of Buyer hereunder shall be assignable by Buyer without the written consent of Seller.

12. Any demands or notices required or permitted to be served hereunder shall be deemed properly served when deposited, postage prepaid, registered, in the United States mail, addressed to Buyer at the address specified in paragraph 5 hereof, or to Seller at 555 South Flower Street, Los Angeles 17, California. In lieu of mailing, as aforesaid, such demands and notices may be personally served upon Buyer.

13. Buyer hereby acknowledges execution hereof without reliance upon any representations, warranties, promises or assurances other than those written herein.

14. This agreement terminates as of the date of commencement hereof all contracts between the parties hereto or their assignors covering sale and delivery of petroleum products to Buyer's service station described in paragraph 5 hereof.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first hereinabove written.

RICHFIELD OIL CORPORATION

By_____
Seller

_____
Buyer

Government Exhibit 5-H

Rev. 12-15-50

SCHEDULE "A"
(For attachment to Sales Contract, Form 337, 398, & 783)

The following schedule of prices is that prevailing on _____ 195__ Richfield's designated resale prices as of the date of this Schedule "A" at the point of delivery specified in paragraph 4 or 5 of the foregoing Sales Contract, are as follows:

Richfield Ethyl Gasoline _____¢ per gallon
Richfield Hi-Octane Gasoline _____¢ per gallon

Richfield does not direct resale prices on lubricating oils and greases. Richfield's posted prices, exclusive of all taxes, to service station dealers on lubricating oils and greases as of the date of this Schedule "A" f.o.b. Los Angeles, Calif., are those set forth in the table below. To arrive at prices f.o.b. _____ add Richfield's established differentials between said point and Los Angeles, Calif. prevailing at time of delivery. As of date hereof said differentials are _____¢ per gallon on lubricating oils and _____¢ per pound on grease.

		DELIVERED PRICE PER GALLON			
AUTOMOTIVE OILS	Tax Class	Bulk	Case 24 1/Qt Cans	Case 1 5 Gal. Litho	1 Gal. Can
RICHFIELD PENNSYLVANIA "PREMIUM" MOTOR OIL SAE 10-W-60 INCL.	(T)	.815	1.00	-	-
RICHLUBE "PREMIUM" MOTOR OIL SAE 10-W-60 INCL.	(T)	.675	.86	-	-
RICHLUBE HEAVY DUTY MOTOR OIL SAE 10-W-40 INCL.	(T)	-	.89	-	-
RICHFIELD AUTOMATIC TRANSMISSION FLUID	(T)	-	1.37	-	-
WESLUBE MOTOR OIL SAE 10-60 INCL.	(T)	.34	-	-	-
RICHFIELD CYL-LUBE	(T)	-	-	.825	-
KLENZLUBE FLUSHING OIL	(T)	.28	-	.42	-
RICHFIELD PENETRATING OIL	(T)	.685	-	.825	.935

1. Minimum deliveries of automotive oil - 5 gallons.
2. Richfield Pennsylvania "Premium" and Richlube "Premium" and Heavy Duty Motor Oils in cans must be sold in full case lots.

		DELIVERED PRICE PER POUND						
		Bbls. Full 400# L.I.B.'S	Non-Returnable Litho. Packages 400# Grease	115# Litho Grease	35#	37# Litho	Case 6/10#	Cas 24/7
GREASES	Tax Class	Only	Drum	Drum	Pail	Cans	Cans	Can
RICHFIELD GEAR OIL SAE 80	(T)	-	-	-	-	.14	-	-
RICHFIELD GEAR OIL SAE 90, 140, 250	(T)	.125	-	.135	-	.14	-	-
RICHFIELD PENNSYLVANIA TRANS-GEAR OIL SAE 90, 140	(T)	.12	-	.13	-	.135	-	-
RICHFIELD CHASSIS LUBRICANT #0, #1	(NT)	-	.1275	.1375	.1425	-	.1575	-
RICHFIELD CHASSIS LUBRICANT #3	(NT)	-	.13	.14	.145	-	.16	-
RICHFIELD ROCOLUBE GREASE #, 2, 3	(NT)	-	.1775	.1875	.1925	-	.2075	-

(T) - Product is subject to Federal Lubricating Oil Tax.
(NT)- No Federal Tax

Government Exhibit 5-I

AGREEMENT OF AMENDMENT

It is agreed that effective as of the date of execution hereof that certain Sales Contract, Form 337, dated _____, executed by and between the parties hereto (or their predecessors in interest) covering the purchase and sale of certain specified petroleum products, to be delivered to Buyer's service station at _____, during the term commencing _____ and ending _____, is hereby amended as follows:

A. The first paragraph of paragraph numbered "1" thereof is hereby deleted and the following paragraph substituted therefor:

"1. Seller agrees to sell and deliver to Buyer and Buyer agrees to purchase from Seller, as ordered by Buyer during the term hereof, the following petroleum products in calendar monthly quantities not greater than the maximum nor less than the minimum amounts hereinbelow specified for the respective products. For fractional monthly periods said amounts will be duly prorated.

	Minimum		Maximum	
GASOLINES	_____	gals.	_____	gals.
LUBRICATING OILS	_____	gals.	_____	gals.
GREASES	_____	lbs.	_____	lbs.

* The above quantities represent those to be purchased and sold under normal business conditions and in the event, because of climatic or other conditions Buyer's sales are abnormally less during certain months of the year, the aforesaid quantities will be proportionately reduced for said months based upon previous business experience of Buyer's station or of business generally in the vicinity in the event Buyer's station has had no previous business experience."

and

B. The language --

"subject, however, to termination by Seller at any time during the term hereof by means of a five day notice in writing to Buyer."

appearing in paragraph numbered "2" thereof is hereby deleted and the following language substituted therefor:

"subject, however to termination by either party hereto at any time during the term hereof by means of a thirty day notice in writing to the other party."

EXECUTED this _____ day of _____, 19__.

SCHEFIELD OIL CORPORATION

By _____

Seller

_____

Buyer

RICHFIELD T. B. A. DISTRIBUTOR'S MONTHLY REPORT

Form 1079 500 Rks. 2-45

DISTRIBUTOR'S NAME_____ LOCATION_____ MONTH OF_____

STATION NO.	NAME	ADDRESS	INVOICE NO.	TIRES UNITS	TUBES UNITS	RECAPS UNITS	BATTERY UNITS	SPARK PLUGS	ACCESSORIES DOLLARS	
			TOTALS							

TIRE UNITS			BATTERY UNITS			SPARK PLUG UNITS			ACCESSORY DOLLARS		
POTENTIAL	SALES	%	POTENTIAL	SALES	%	POTENTIAL	SALES	%	POTENTIAL	SALES	%

619

280

Government Exhibit 7

[fol. 620] GOVERNMENT'S EXHIBIT 8

Los Angeles, February 19th, 7.

Mr. G. R. Miller.

I am returning herewith next statements prepared by you at my request covering Division comparisons and Assistant Manager territorial comparisons, by agencies, on our TBA sales position for 1946.

It is evident that some Assistant Managers are doing a fairly good job; others are doing no job at all and tha fact is indisputable that at least 50% of our bulk plants—either salaried or commissioned—are capable of doubling the TBA sales produced in 1946 without any nervous strain, increased blood pressure, or much extra effort, because the outlets are available, the merchandise will be more plentiful, the demand has never been greater, and all we have to do is to bestir ourselves and supply it.

Our TBA activity in 1946 yielded a profit to Richfield of $471,000, an increase of 43.5% over the profit for 1945. This means that every month that went over our heads each controlled L. O. unit produced an average *Per Unit, Per Month*, of better than $35.00 which, reduced to terms of resale gallons, means 1/3 cent per controlled resale gallon added profit to the corporation through our TBA activity.

Here we are embarking on a program involving many millions of dollars for the purchase and development of new resale outlets, all of which will be engaged in TBA activities and greater merchandising activity than ever before in the history of the industry. I do not know when we can begin building new units but I do know we have an enormous potential field already in existence by arousing new and added interest through the outlets we already have. Some territories seem to be getting along pretty well because the warehouses are stocked with TBA merchandise and the commission agents are enthused on the earnings possibilities of the TBA activity. And in several cases I have talked with the commission agents who have told me the TBA net income is as great as their earned commission on the sale of petroleum products. The fact is

indusputable that when we earn a dollar the commission agent earns two dollars or more and the dealer earns three to four dollars, so there is general benefit straight down the line and greater income to all of us if greater activity in TBA can be developed.

Some of the worst points indicated on the attached statements are some of the points where we control the majority of gasoline business and there must be some reason why certain agents will take up the TBA program [fol. 621] and go to town with it and others treat it with complete indifference and make no progress whatsoever.

This is what I would like to have done, on a predetermined schedule to be handled by Mr. Tanner with the forces in the Division: I would like Mr. Tanner to proceed to the Southern Division and develop through Mr. Burgner (leaving Mr. Burgner entirely out of the actual visit to the dealer), Mr. Tanner to be accompanied by the Zone Merchandiser on a trip to at least four or five low production points in each Assistant Manager's territory and then, based on whatever facts Mr. Tanner develops each week, furnish a report to me (with copy to the Division Manager, the Assistant Manager in charge of merchandising in the Division) revealing exactly what is wrong with our TBA activity at each individual point. If it is a commission agent who takes no interest in TBA, then we need a new commission agent. If it is a dealer who refuses to interest himself in this profitable endeavor, then it's a new dealer. If it is a Zone Merchandiser who is a traveling territorial tourist and whose general record is bad, then it's a new Zone Merchandiser. If it is an assistant Manager in charge of merchandising who never visits his territory with his men, then we will do something about that.

But what I am anxious to develop is——

What is wrong with the setup at the points where we accomplish nothing with our TBA activity?

When Mr. Tanner has completed one Assistant Manager's territory, he can then take up another and so on, completing one entire Division and then proceeding to another Division, finally covering our entire territory, getting a cross

section of five or six agencies in each Assistant Manager's territory.

The purpose of this showdown is to develop the reasons why——

Some territories lag in TBA performance and others do not,

Some commission agents are steamed up and highly interested in TBA and others are not,

Some operating Assistant Managers are behind the issue and others are not,

On my trips in the Divisions I hear of the Assistant Manager in charge of merchandising in the territory and in another territory we would never know we had an Assistant Manager in charge of merchandising,

One man gets out and the other man stays home,

Whether we lack manpower to do the job or whether we have a duplication of effort, stumbling all over themselves.

[fol. 622] The proposition is inescapable that in the early future tires, tubes, batteries, and all forms of accessories will be available in great plenty. We will not face a "seller's market" but will build 400 or 500 new service stations all of which will handle these commodities, and unless we clean out the organization that is not TBA minded and get the organization to handling and talking TBA products we will never do a successful job in the "buyer's market" which is ahead of us.

Before Mr. Tanner starts in the Divisions I would like to discuss this program with you and Mr. Tanner verbally.

W. T. Dinkins.

WTD/r
Encls

cc: Mr. A. C. Carr
Mr. H. T. Hutchinson
Mr. E. Kirby
Mr. W. G. King, Jr.
Mr. G. B. Tanner

[fol. 623] GOVERNMENT'S EXHIBIT 9

General Office

June 16, 8.

E. Kirby
C. B. Bradford
W. G. King, Jr.

Subject: Split Pump Accounts and Split Pump Price Postings

Effective at once, please arrange to discontinue all split pump resale accounts in your entire Divisions, and at the same time, please withdraw all split pump price postings.

It will be 100% Richfield or we will withdraw from such accounts, if we have any left, that are now on a split pump basis.

Will you please immediately acknowledge this, and as soon as you have made a convas of your situation and have conformed to the new policy, advise me again, assuring me that we are on a 100% basis?

W. T. Dinkins.

AGM:AR

cc: W. T. Autrey (J. N. B.)
E. C. Winder

[fol. 624] GOVERNMENT'S EXHIBIT 9-A

Seattle Branch, October 2, 1940

Mr. S. L. Nicholson

Subject: Kenneth Kohl, 1203 South Alaskan Way

Our sales contract with subject account expires on February 6, 1941. When we were in the account on a split pump basis, he averaged 13,500 gallons per month. Since we took the account over on a 100% basis on February 7th, we have averaged well above 40,000 gallons per month. In August the gallonage was 47,726. When we were in the account on a split pump basis our motor oil volume averaged 7 gallons per month. Since we have been in on a 100%

basis we have averaged over 55 gallons per month, all of which is still only a drop in the bucket compared to the account's total motor oil volume.

As you know, Mr. Kohl is very much interested in having certain modernization work done. His chief interest is in removing the large concrete block which lies between two of his super buildings behind the service station, and finishing that portion of the premises off into another lubrication unit. If we are not willing to handle this particular part of the modernization program immediately Kohl wants us to let him know as he plans to do the work himself.

There are other alterations which are very much needed, i.e., the yard should be hard-surfaced, the extended canopy, or front section of the canopy, should be remodelled to tie in more closely with the architectural lines of the service station building. A toilet and rest room should be installed.

I have made quite a thorough investigation of the cost which will be involved in handling all of this work and I am itemizing it below:

Removal of the concrete block	$ 160.00
Installation of back wall, roof and doors for new lubrication room	400.00
Hoist	215.00
Hoist installation, plumbing fixtures, plumbing for rest room	275.00
Lubrication display panelling and cabinet	165.00
#3 Lubrication Unit	143.78
Paving (Black Top)	300.00
[fol. 625] Paving (Concrete)	250.00
Installation of Front Marquee	170.00
Total	$2,078.78

In consideration for our doing the above work, Mr. Kohl is willing to sign a five year sales contract and, in addition, he is willing to handle our products exclusively in the new lubrication room and he is willing to eliminate all com-

petitive canned oils from the station entirely with the exception of Pennzoil.

Mr. Kohl owns all the buildings and equipment at this location and he leases the ground from A. M. Castle & Company for a rental of $100 per month. His lease is subject to cancellation on December 31st of any year. Kohl is willing to assume the risk of cancellation of the basic lease by guaranteeing to reimburse us on a 3 year pro-rata basis in the event of such cancellation.

This is by far our best account in the city of Seattle and it is not only desirable from the standpoint of volume but also from the standpoint of cost of deliveries since Mr. Kohl is very cooperative in letting us handle all deliveries at our convenience and in taking truck retains, etc. We have never been able to meet competitive prices on bulk oils or else we would have been selling much more oil to this account. However if we make the expenditure which is proposed above it will not only mean the assurance of substantial gasoline volume but will also mean that we will have a very good motor oil and grease account. As I have indicated above, Kohl is going ahead on his own hook with the removal of the concrete block and the installation of the lubrication unit if we do not give him our decision immediately. If he does this work it means that we will not get any more oil and grease volume than we are now getting and our subsequent negotiations for renewal will be made more difficult because of my statement to Kohl a number of months ago that we wanted to make some improvements for him.

F. B. Wilson—Branch Manager.

FBW:h

[fol. 626] GOVERNMENT'S EXHIBIT 10

Richfield Oil Corporation

Marketing Department—Southern Division

155 West Washington Blvd.

Los Angeles, May 7, 1941.

To All Branch Managers, Salaried Agents, Commission Agents, Territory Salesmen and Merchandisers, Southern Division

Subject: Form 542, Revised 3-41 (24 Hour Cancellation Privilege) Rewriting Existing Deals

Service Station Lease, Form 542, was recently revised to provide for a 24-hour termination privilege at any time rather than the former 6-month termination privilege. The Schedule "A" form, for use in connection with Form 542, has also been completely revised to simplify and expedite the preparation of this latter form.

"Form 542 Instructions"

In a number of instances the new 24-hour Form 542, Sublease, has already been negotiated. *However, it is now the desire of the management that wherever possible existing 6-month Form 542 agreements be replaced with the new 24-hour forms. At the same time the new Schedule "A" forms are likewise to be used.* To accomplish this changeover, each of you should start trying to sign up the sublessees at L. O. stations on the new 542 forms and new Schedule "A" forms approximately 60 days prior to the nearest optional termination date. (For example, if an existing old type Form 542 is terminable as of any January 15th or any July 15th you will begin your efforts to sign up the sublessee on the new 24-hour form not later than May 15th.)

Important

If you are not successful in securing the signature of any sublessee on the new form by at least 45 days prior to the nearest optional termination date, you should *imme-*

diately so notify this office in order that we may supply you with a Notice of Termination to be served on the sublessee not less than 30 days prior to the nearest optional termination date.

As the optional termination dates vary from station to station, this changeover will take approximately six months. This office is preparing and will have in the hands of the respective Agencies and Branches as quickly as possible a [fol. 627] complete list of the various L. O. stations still operating on the 6-months cancellation basis type of Form 542 and as soon as received, each of you should immediately proceed in accordance with the foregoing. Likewise it is important that you maintain a very close follow-up system to make certain that none of the nearest optional termination dates pass by without the changeover taking place.

Consideration will be given to not making the changeover in those few instances where the changeover might violate the spirit of some old understanding and possibly result in the loss of a good sublessee or in the loss of business. If any cases develop which would fit in this category you should so advise this office immediately through the medium of an individual letter setting forth the reasons why the changeover should not be made to the new revised Form 542.

One more point to be brought out, however, is the fact that the new Form 542 is to be submitted in *triplicate* and each of the Schedule "A" forms in *quadruplicate*.

"Instructions On"

"Form 542-A, 542-B, 542-C, and 542-D"

The new Schedule "A" forms, (which are in addition to Form 542-A) have been assigned Form Nos. 542-B, 542-C and 542-D, and when used will constitute a portion of or the entire Schedule "A". A specimen set of new Schedule "A" forms, covering a theoretical situation, has been prepared and is attached for your information and guidance. These forms are more or less self-explanatory, and a study of the specimens will furnish a comprehensive picture concerning the use and purposes thereof, and the

manner in which they are to be prepared. For further clarification, however, we are setting forth the following additional remarks:

(a) When preparing these forms it is well to keep in mind that, legally, the contents of the Schedule "A" are as much a part of the Service Station Lease itself as is any clause printed therein. In this respect, it is important that these forms be prepared without deletions or alterations and that, if such irregularities occur, it will be required that they be initialed by both parties to the Lease. To avoid these irregularities you will note that we have provided a footnote to the forms which obviates the necessity of deleting by ruling out, any printed equipment description not used or, requiring that the word "None" be inserted in the "Quantity" column. Also, for the same purpose, we have provided blank lines for the reflecting of equipment descriptions which are not printed on the forms and have placed these blank lines in positions permitting inserted additions without distorting the order arrangement planned. As many additions may be made to the forms as [fol. 628] desired as this practice does not constitute an irregularity and does not affect the legality of the document.

(b) No change has been made in respect to the showing of the legal description of the property involved but you will note that we have provided for the recording of the street, town and state address of the unit. This information will be of considerable value as the location identification is required on numerous records maintained in Division Offices. In respect to this feature it is intended that street and number be used in all instances where possible, using only such addresses as, 8th and Broadway, S. E. Corner Main and "N" Streets, Highway 101 and Magnolia, where no street numbers exist.

(c) One line may be used for two or more articles of equipment only in cases where the articles carry

an identical description as to "Make and Model" and "Type or Size" and where ownership is the same for all. In all other instances separate lines will be required. In preparing the attached specimen we have endeavored to stress this particular feature.

(d) In those cases where a suitable printed description cannot be found on the form, or if there is any doubt as to the propriety of using any of the printed captions, it is preferable that a blank line be used for entering the description of the item in question or that, if the items in question are numerous, a blank schedule form (542-A) be used. In cases such as these every effort should be made to add the items to the proper section of the form and this may be accomplished by determining the section which contains items of the same nature as the item in question. In this respect, we wish to point out that, with the exception of water coolers and floor safes, no other type of equipment than that printed may be inserted in the section headed "Retailing Equipment".

(e) On our specimen for Form 542-A it would not be practical to indicate all items which are to be included thereon, however, this form will be provided for future use in conjunction with the new forms to fulfill the requirements of service station deals, not frequently encountered, which involve cafes, barbecue stands and other facilities completely foreign to service station operations; also, for equipment units consisting of a number of component parts requiring listing but not provided for by printed captions on Form 542-C or 542-D.

(f) *The signature of the Lessee should be placed on the last page of the Schedule "A" immediately following the last item listed. The dates to be shown will be the effective date of the Service Station Lease and the date the Schedule "A" is signed. See page four of attached specimen regarding this particular feature.*

[fol. 629] (g) It will be noted that page numbers have not been printed on any of the four forms. This is attributable to the fact that it cannot be definitely determined which or how many of the forms will be involved in the preparation of a complete Schedule "A". For example, it is anticipated that the usual service station deal will involve the use of Form 542-B, C and D. If such is the case, these forms will complete Schedule "A" in the order mentioned and the sheets will be typed "Page one of three", "Page two of three" and "Page three of three". In the event only sheets 542-B and D are required, they will be typed "Page one of two", and "Page two of two". Where all four forms are involved the pages will be typed "Page one of four", "Page two of four", "Page three of four" and "Page four of four", for Forms 542-B, C, D and A, respectively.

(h) *Forms 542, Service Station Lease*, will be typed to provide *original and two copies* and its *Schedule "A" will be prepared in original and three copies.*

The foregoing instructions, augmented by the attached specimen schedule, cover the preparation of Schedule "A" to the Service Station Lease. Once this feature has been satisfactorily accomplished it is important that records be properly maintained which will permit undisputed settlements with outgoing operators, the accurate rewriting of new leases and schedules and the consummation of quit claims or renewals which may be involved in the case of locations being leased from others. In respect to this matter, all additions and removals of equipment at service stations must be properly and promptly reported.

In the case of additions represented by shipments direct from the vendor to point of installation, it will be required that the receiving record copy of the Purchase Order be signed by the Branch Manager or Commission Agent. Other types of additions and all removals are effected either by the Branch Manager or Commission Agent or the C. & M. Department. In either case, such changes will be reported

through the use of Form 90, Equipment and Materials Transfer and Receipt, and the original thereof, together with the pink (receipt) copy, except in cases where the latter is tendered, the Lessee for receipt covering removal, will be dispatched to the Division Accounting Department. In the case of changes made by the C. & M. Department, the duplicate (tissue) copy of the form will be forwarded to the Branch Manager or Commission Agent of the territory in which the service station is situated.

It will be noted that the procedure as outlined in the preceding paragraph provides for notification in one form or another to the Branch Manager or Commission Agent of all changes made in facilities at service stations under his jurisdiction. This provision is made for the purpose of having a Form 836, Change of Equipment (amendment to service station lease and schedule), properly prepared and executed. This form will be prepared and distributed in the manner prescribed for Schedule "A" to the Service Station Lease.

[fol. 630] Important

Where we approve the continuance of a service station lease, Form 542, on the 6-months termination basis, it still is desired that you convert the Schedule of any such 542 to the new Schedule "A" forms. In the few instances of this particular nature, *and only in such instances*, the following phraseology should appear at the conclusion of the last page of the new Schedule:

> "This Schedule "A" is to be attached to and made a part of that certain Service Station Lease, Form 542, made and entered into this ..... day of ....., 19..... by and between Richfield Oil Corporation, as Lessor and ....., as Lessee, with the express intent and purpose that as of the ..... day of ....., 19..... it will replace, supersede and supplant the Schedule "A" which has heretofore been attached to and made a part of said Service Station Lease, Form 542, and to the same effect as if this Schedule "A" had been the original Schedule "A"

attached to and made a part of said Service Station Lease, Form 542."

Below such phraseology should be provided a space for the signature of the Sublessee, a space for the date of execution of the schedule, and a space for execution by Richfield as follows:

"Richfield Oil Corporation, By —— ——"

As indicated, this phraseology is to appear only on new Schedule "A" forms which are not executed concurrently with a new Service Station Lease, Form 542.

This is to remind you the rewriting of all these documents will present an unusually heavy volume of routine handling in the Division Office until this entire task is completed, therefore, you are urged to do your part of this job properly by submitting all papers prepared correctly signed and initialed where necessary. Careful handling in the field will preclude documents being returned for correction and obviate delayed papers, a problem which must be eliminated entirely.

W. G. King, Jr.

Serial Letter No. 81.

[fol. 631] Instructions Concerning Designation of Company-Owned and Lessor-Owned Equipment on Forms 542-A, B, C and D

It is possible in some instances that our Branches and Agencies will not be in a position to know definitely whether service station equipment is company-owned or lessor-owned and therefore be unable to properly insert the required symbols to indicate ownership on the new subject forms.

Where this conditions prevails, and where it involves the initial preparation of these new forms, our field offices are hereby instructed to omit the symbols referred to, submitting these documents to the Division Office by leaving the column provided for ownership designation blank. This information will then be inserted on all copies when re-

ceived by our Accounting Department, and with the return of the quadruplicate copy to the bulk plant or agency office, this information will then be on record in their office and they will be in a position to furnish the symbol on all subsequent schedules.

Since this feature does not affect or concern our Lessee, the omission thereof on his copy will in no way impair the legality of the document.

W. G. King, Jr.

[fol. 632]

Schedule A

Note: The absence of any specific quantity inserted against any item of equipment in this column shall be indicative of "None".
* In this column letter "C" indicates Company-Owned, "L" indicates Lessor-Owned.

Description of Real Property

Street and Number: 201 W. Washington Blvd.
Town: Los Angeles.
State: California.
Legal Description: S.S. No. 1261.

The real property used for service station purposes upon which the buildings, fixtures, equipment and facilities hereinafter described in this Schedule "A" are situated, which real property is located at the northwest corner of the intersection of Washington Blvd. and Hill Street, and is more particularly described in the lease referred to in paragraph "11" of this lease.

Buildings and Improvements

Quantity (See Note)	*	Description	Make and Model	Type or Size	Serial No.	Company Equip. No.
1	L	Service Station	Steel	B-3 Spec.		
2	L	Canopies	Steel			
2	L	Restrooms	Steel—Built In			
1	L	Lubrication & Washrack Room	Wood & Corr. Iron			
1	L	Tire and Battery Shop	Stucco			
3	L	Electroliers	Metal	24'		
3	L	Floodlights (Incl. Lamps)	Benjamin			
198 (ft.)	L	Fencing	Wood	H		
1	L	Canopies (Isolated)				
1	L	Waste Oil Tank		120 Gal.		
1	L	Air, water and gasoline piping systems and electric system.				

Retailing Equipment

Quantity (See Note)	*	Description	Make and Model	Type or Size	Serial No.	Company Equip. No.
2	L	550 Gal. U. G. Tanks				
1	C	550 Gal. U. G. Tanks				12032
		550 Gal. U. G. Tanks				
1	L	600 to 1000 Gal. U. G. Tanks		1000 Gal.		
1	L	Over 1000 Gal. U. G. Tanks		2000 Gal.		
		Blind Pumps				
1	C	Computing Pumps	Bennett	76	MJ 1828-S	8672
1	C	Computing Pumps	Bennett	541F	MK 11487-S	8843
1	C	Computing Pumps	Wayne	40A	2655	7269
1	C	Meter Pumps	Bennett	373	96408	
1	C	Meter Pumps	Bennett	543F	97502	
		Meter Pumps				
[fol. 633]						
1	C	Visible Pumps	Boyle Dayton	78	2159	1294
		Visible Pumps				
1	C	Air Compressor	Hallett RSV-7	14	14165	7863
1	L	Air Compressors w/1½ HP Motor /#86798	Baker—Mod 684		3897	
		Battery Chargers	McColpin-Christie	100V 600W	Hy-EF-1012121	
1	C	Cash Register	National	Mod 1046 GT	2378024	14247
1	C	Gas Buggies	G & B	50 Gal.	23573	RG-1046
3	L	Hi-Boys	Bennett	30 Gal.		
1	C	Hi-Boys	Marvel	30 Gal.	10267	4378
1	C	Hi-Boys	Marvel	30 Gal.	10268	4379
		Hi-Boys				
		Hi-Boys				
		Hi-Boys				
1	C	Hoist	Hallett-Hydraulic	A-33	8279	
1	C	Lube Cabinet	Rheem	Steel		10867
1	C	Lube Unit	Richfield	Series "B"	322	10942

Retailing Equipment (Cont'd)

Quantity (See Note)	•	Description	Make and Model	Type or Size	Serial No.	Company Equip. No.
1	C	Grease Guns	Graco U-840	Hand		
1	C	Grease Guns	Graco P-610	Water Pump		
1	C	Utility Guns	Graco U-830			
		Utility Guns				
1	C	Chassis Lube Unit	Graco CS-600	Z-178S-TIP		
		Extensions				
1	C	Adapters	Graco CS-163	Swivel		
1	C	Adapters	Graco Z-70	Hydraulic	Alemite	
1	C	Universal Joint Gun	Graco UP-640			
1	C	Steering Gear Gun	Graco UP-620			
		Power Gun				
4	C	Pressure Tanks				
3	C	Meters				
2	C	Hi-Pressure Air Hoses				
		Air Operated Pressure Guns				
1	C	Nozzles	Graco U-805	Suction		
1	C	Wheel Bearing Gun	Graco P-610			
2	C	Grease Guns	Graco AJ-215 Jr.	Power		
3	C	Grease Packs	G & B			
1	C	Oil Stream Gun	Graco S-575			
3	L	Air Wells	Cox Comb.	UB A&H		
		Air Wells				
1	L	Air Towers	Steel	16'		
1	C	Air Towers	Gowser Comb.	Mod 20t w/6 U. G. Tanks	4704	1297
1	C	Lubos	Bowser Comb.	Mod 20t w/6 U. G. Tanks	4704	18297
		Electric & Oil Heaters				
2	L	Neon Signs	"Richfield"	18'		
1	L	Neon Signs	"Eagle"			
1	C	Car Washing Machines	Bean w/1 HP Wagner Mtr # 4978		4297	10826
1	C	Neon Towers	Steel w/2 Richfield Signs (Neon)			
1	C	Safe	Diebold Floor		368927	9826
1	C	Water Cooler	GE	Bubler	89274	9827

Schedule A

Note: The absence of any specific quantity inserted against any item of equipment in this column shall be indicative of "None."

* In this column letter "C" indicates Company-Owned, "L" indicates Lessor-Owned.

Movable and Other Operating Equipment

Quantity (See Note)	*	Description	Quantity (See Note)	*	Description
1	C	Adapters, Hoist	1	C	Measures—Swingspout Oil, 1 Pt.
1	C	Auto Lift, Hydraulic	1	C	Measures—Swingspout Oil, 1 Qt.
1	C	Auto Jacks	1	C	Measures—Swingspout Oil, ½ Gal.
1	C	Auto Jack (Walker Trans.)	1	C	Measures—Swingspout Oil, 1 Gal.
1	C	Auto Jack (Joyce Hydr. Pumper)	2	L	Mirrors, in Restrooms w/Shelves
2	L	Basins, Wash in Restroom	2	L	Measures—Krackle Krome ¼ Gal.
2	L	Baskets, Waste Paper	2	L	Measures—Krackle Krome 1 Gal.
		Battery Service Kit	1	C	Oiler, Spring
1	C	Boards, Richfield "A"/"I"	1	C	Oiler—Pine Copperized
1	C	Brooms (Push)	1	C	Oiler—Goldenrod
1	C	Brushes (Floor)	8	C	Padlocks with Keys (Yale)
1	C	Buckets (3 Gal. Water)	1	C	Pails, Gem (Windshield Wiper Buckets)
			2	C	Pails, Water
			2	C	Pliers 6"–8"
1	C	Cans, Emergency 1 Gal.			Pump, Hand—for Bbls.
		Cans, Galv. Oil Service ....Gal.			
		Cans, Oil			
1	C	Can, Rubbish	3	C	Racks, Canned Oil Display
2	C	Cans, Sanitary Step-on	1	C	Racks, Oil, Bottle w/8 Bottles
1	C	Cans, Test	2	L	Racks, Tire (Steel Pipe)
1	C	Can Openers for Canned Oil	1	C	Rim Tool Tire Spreader
1	L	Cash Box and Desk Complete	1	C	Rake—Yard
		Containers, Grease	1	C	Rim Tool—Pacific
1	L	Creeper (Boyd Auto)			Safe (Page 2)
			1	C	Scraper, Putty Knife (Windshield)
2	L	Dispensers, Powdered Soap	2	C	Screw Drivers 4"–6"

2	L	Dispensers, Seat Cover
2	L	Dispensers, Toilet Paper
3	C	Drums, Corrugated w/Faucet 30 Gal.
1	C	Drums, Klenzine w/Faucet 50 Gal.
3	C	Drums, Ser. Sta. w/Faucet 15 Gal.
2	L	Dispensers—Paper Towel
		Fans
1	C	Fire Extinguishers, 1 Qt.
1	C	Fire Extinguishers, 2½ Gal.
1	C	Flashlights
		Fountains, Drinking
1	C	Funnels 6"
1	C	Funnels 8"
1	L	Gauges, Air (Service Equip. Co.)
3	L	Gauges, Air (Diamond U)
3	L	Gauge Sticks (550, 1000, 2000)
1	C	Hammer, Ball-Pein
1	C	Hand Oilers—Pressure Oilers
3	L	Hose, Air
6	C	Hose, Gasoline
1	L	Hose, Garden (50 ft.) w/nozzle
1	L	Incinerator (Concrete)
8	L	Lamps 30 Watt
10	L	Lamps 60 Watt
12	L	Lamps 75 Watt
14	L	Lamps 100 Watt
1	C	Lube Check Boxes, Complete
1	C	Light—Drop Cord 25' Length
1	C	Ladder (Step) (Extension Ladder)
1	C	Shackle Clamps
1	C	Shackle Bars
1	C	Signs, Porcelain "Lubrication"
1	C	Signs, "Washing"
1	C	Signs, "Stop Your Motor"
2	C	Signs, "Men" and "Women"
1	L	Signs, Wood "Lubrication & Washing"
1	C	Signs, Wood "Richfield"
1	C	Signs, Wood "Richfield-Hi-Octane"
		Signs
1	C	Signs, "No Smoking"
1	C	Stools—Boyce Service Station
1	L	Spark Plug Cleaner (See Page 4)
1	C	Tanks, Tube Testing
2	L	Toilets, Comp. in Restrooms
1	C	Tray for Swingspout Oil Measure
		Tire Tool Board (See Page 4)
1	L	Vulcanizer Unit—Dill-6601
4	C	Wrenches, Crescent 6", 8", 10", 12"
1	C	Wrenches, Hub Cap
6	C	Wrenches, Socket (Set)
6	C	Wrenches, Plug (Set)
1	C	Wrenches, Stillson 14"
1	C	Wrench—B & S Auto
1	C	Wrench—Hudson & Essex Clutch
1	C	Wrench—Tank Cap
2	C	Wrench—Monkey
1	C	Work Bench—Wood (Luberoom)

[fol. 635]

Schedule A

Note: Symbol "C" indicates Company-Owned and "L" indicates Lessor-Owned

Page Four of Four.

1	C	Herbrand 88–14 Tire Tool Board with 1 #1126 Iron 1 #1127 Iron 1 #1124 Rim Tool 1 Pair #1134 Irons 1 #1128 Spreader 1 #1131 Awl 1 #1132 Wire Brush 1 #403 Chisel 1 #443 Punch 1 #1142 Hammer 1 #1051X Wrench
1	L	Goodyear Battery Service Kit with 1 Hydrometer 1 Syringe 1 Terminal Cleaner 1 Carrying Strap 1 #750 9/16 × 5/8 Battery Terminal Wrench
1	L	Champion Spark Plug Cleaner and Tester with 1 Champion Spark Plug Tool and Gap Gauge 1 Duro #1420 5/8 Spark Plug Wrench 1 Duro #1418 9/16" Spark Plug Wrench 1 Duro #864 1-1/32" Spark Plug Wrench 1 Duro #862 29/32" Spark Plug Wrench 1 Duro #861 27/32" 1-1/32" Spark Plug Wrench 1 No Brand 15/32" & 31/32" 3 Spark Plug Wrench Handles

Other Than Service Station Equipment

1	C	Cafe Building (Frame) 18′ x 36′ x 12′
1	C	Bathhouse (Frame) 15′ x 20′ x 10′—Containing two complete toilets, two complete showers and one heater-room.
1	C	Brick Barbecue Pit
7	C	Cabins, Single (Frame) 18′ x 16′ x 8′
7	C	Cabins, Double (Frame) 15′ x 16′ x 8′
22	C	Iron Beds
21	C	Bed Springs
7	C	Electric Hot Plates (in cabins)

etc., etc.

Lessee—John R. Sawyers

Lease Effective April 1, 1941 Date Signed:

[fol. 636] GOVERNMENT'S EXHIBIT 10-A

Pasadena, July 31st, 41.

Mr. F. F. Little

Subject: Service Station #595, 4 Huntington Drive, Alhambra, California, Harlan G. Mills, Sublessee

With reference to page two of Serial Letter No. 81, dated May 7th, 1941, regarding the change over of 542 subleases, we wish to call your attention to the circumstances surrounding our sublease with the above dealer and request that his present 542 be allowed to remain in effect.

Mr. Mills is an exceptional dealer and we wish to do nothing to rupture the good relations we have always had with him and in presenting the new type 542 for his signature we are very much afraid he will take offense.

His present 542 calls for payment of gallonage rent on the basis of his sales taken from the meter readings of his gasoline pumps on the close of business on the last day of each month instead of on sales as is the custom on all other L. O. stations. His purchases of gasoline are made in truck and trailer quantities on which a discount of ¼c is allowed in addition to temperature correction.

May we have your approval at once so that we can submit the new Schedule before September 1st, 1941.

B. J. Shaffer.

BJS-L

[fol. 637] GOVERNMENT'S EXHIBIT 10-B

Inter-Office Communication

Location Los Angeles

August 11, 1941.

In Reply, Refer to File No. .....

To Mr. B. J. Shaffer
Dept. Pasadena

Subject: Service Station #595, #4 Huntington Drive, Alhambra, California

In reply to your letter of July 31st, this is to inform you that the management does not approve the continuance of the six month basis in so far as Station #595 is concerned. It is felt that after this long period of time Mr. Mills should have sufficient confidence in the company to sign the new 24-hour type paper.

Mills' separate letter agreement of ¼c per gallon on truck and trailer deliveries will, of course, continue in effect, and it will be permissible for you to alter the new Form 542 in the same manner as the old one so as to provide for the computation of subrentals on the basis of sales from the station rather than deliveries thereto.

Please be governed accordingly and submit the new agreement at your earliest convenience.

F. F. Little.

FFL:hp

8/13/41. Mr. Mills will be signed as soon as possible. In any event before the next cancellation period of 2/28/42.

B. J. Shaffer.

[fol. 638] GOVERNMENT'S EXHIBIT 10-C

Pasadena Branch, October 27, 41.

F. F. Little

Sales

Subject: SS#595, #4 Huntington Dr., Alhambra, California, Harlan G. Mills, Lessee

Subject account has been asked to sign a new 542 with the 24 hr. cancellation, but he is reluctant to do so, as he states that he should get special consideration due to circumstances surrounding the account. When we took it over 5 years ago, it was thru Mr. Mills efforts that we acquired the account as a LO deal. He was responsible for selling the property owner on our deal. He states also he has such an investment in equipment, such as lighting plant, and special tune-up equipment, and also around $1500.00 in personal charge accts., that is would be impossible for him to move out in 24 hrs. notice.

Mr. Mills asls us to change the contract to at least a 60 day notice as this would give him chance to make other arrangements in case of cancellation.

B. J. Shaffer.

BJS/rv

[fol. 639] GOVERNMENT'S EXHIBIT 10-D

Inter-Office Communication

Location Los Angeles

November 4, 1941.

In Reply, Refer to File No. .....

To Mr. B. J. Shaffer
Dept. Pasadena

Subject: Service Station No. 595, 4 Huntington Drive, Alhambra, California

The proposal contained in your letter of October 27th has again been presented to the Management and again

resulted in a rejection. We will have no choice but to convert Mr. Mills to the 24-hour basis. Surely if the matter is properly explained to him the conversion can be effected without difficulty. This will in no way affect his agreement covering Truck and Trailer Allowance and we have previously informed you that you may make the same alterations in the new form as appeared in the original one.

Please get behind this matter personally and bring about the conversion on the earliest possible date.

F. F. Little.

FFL:cag

11/5/41. Regardless Mr. Mills doesn't want to sign. He would like to talk it over with Mr. Little at his convenience.

B. J. Shaffer.

[fol. 640] GOVERNMENT'S EXHIBIT 10-E

Inter-Office Communication

Location Los Angeles, California

November 10, 1941.

In Reply, Refer to File No. .....

To Mr. B. J. Shaffer
Dept. Pasadena

Subject: Service Station No. 595, 4 Huntington Drive, Alhambra, California, Harlan Mills

Reference is made to our letter of November 4 and to your reply of November 5, both of which had reference to the refusal of this account to be converted from the six month basis to the 24 hour basis.

The management does not choose to make an exception in this instance and as you have been unsuccessful so far, we suggest that you hold this letter in your office and bring it to my attention the next time I call there.

F. F. Little.

FFL:bm

[fol. 641] GOVERNMENT'S EXHIBIT 11

Termination Agreement

This Agreement, executed this ..... day of ....., 19....., by and between Richfield Oil Corporation, hereinafter called "First Party," and ....., hereinafter called "Second Party" (whether one or more),

Witnesseth:

That for and in consideration of the mutual covenants and agreements of the parties hereto, hereinafter set forth, the parties hereto agree that the agreements hereinbelow described shall be and the same are hereby terminated as of the close of business on the ..... day of ....., 19....

Second Party hereby accepts from First Party, as of the date of termination herein set forth, surrender of all property, if any, leased or licensed to First Party under any of the aforesaid agreements and releases and discharges First Party and the predecessors in interest of First Party from any and all claims, liabilities, obligations and/or causes of action arising out of or in connection with said agreements and/or the performance or non-performance of any of the terms, provisions or covenants therein contained.

In Witness Whereof, the parties hereto have executed this agreement the day and year first hereinabove written.

Richfield Oil Corporation, By —— ——, First Party,
—— ——, —— ——, Second Party.

———

[fol. 642] GOVERNMENT'S EXHIBIT 12

4/10/44.

Reported Verbally to H. T. H.

E. J. Bradford

Please give me a report on why Walt Edgar has only bought 10 tires this year from Goodyear when his sales must have been at least 75. Goodyear have 7000 tires on hand so lack of stock is no excuse. Inasmuch as OPA only

requires Edgar to hold old tires 30 days after sale and he has dozens and dozens on hand his sales were probably in excess of 75.

H. H. 4/4

[fol. 643] GOVERNMENT'S EXHIBIT 13

Richfield Oil Corporation

Northern Division, 217 Pine Street

Seattle, Washington, May 2, 1944.

Walter Edgar
2304 W. Burnside Street
Portland, Oregon

Dear Sir:

Richfield Oil Corporation, as "Lessor", and you as "Lessee", have made and entered into a Service Station Lease dated the 17th day of March, 1942, by the terms of which there was leased certain real property situated in the City of Portland, County of Multnomah, State of Oregon, described in the Schedule 'A' of said Service Station Lease as follows:

> "The property hereunder leased is that certain real property used for service station purposes upon which the buildings, fixtures, equipment and facilities hereinafter described in this Schedule 'A' are situated, which real property is located at the southwest corner of W. Burnside Street and Twenty-Third Avenue (otherwise known as 2304 W. Burnside Street) and is more particularly described in the lease referred to in paragraph 11 of this lease."

together with all appurtenances thereunto belonging and with all improvements, buildings, fixtures, equipment and facilities situated on said real property and particularly described in said Schedule 'A'.

Said Service Station Lease is for the period commencing March 17, 1942, and continuing until terminated by either party by means of a written notice of election to

terminate served on the other party at least twenty-four (24) hours prior to the effective date of termination specified in such notice.

Richfield Oil Corporation hereby notifies you that it elects to terminate said Service Station Lease effective on the 3rd day of May, 1944, at the hour of 7:00 P. M., and hereby demands that at such time upon such date you surrender to the agent of Richfield Oil Corporation requesting such surrender the real property, improvements, buildings, fixtures, equipment and facilities leased by said Service Station Lease.

Yours very truly, Richfield Oil Corporation, By —— ——, For the Division Manager.

"Received and Accepted."

I have read the above, W. F. Edgar.

[fols. 644-650] GOVERNMENT'S EXHIBIT 16

David Weil. Mr. Dinkins has approved. Please draw necessary Bill of Sale. Brower.

Linnton, March 28, 5.

Mr. W. T. Dinkins

Home Office

Subject: SS-831-A, 21st & Broadway, Portland, Oregon

We purchased the subject location in 1941. The service station buildings and the super buildings together with all equipment are owned by the dealer, Frank Harding. We now propose to purchase the service station and super buildings from Mr. Harding and he has finally agreed to sell them to us for the sum of $100.00.

We are now and have been since Pearl Harbor in the position of being at Harding's mercy for the reason that if any misunderstanding or difficulty should occur between us, he could remove the service station buildings and super buildings and we could not replace them at this time and we would be sitting with a fine location but unable to operate it.

Because our purchasing these improvements will protect

us against any eventuality and because we are able to buy them for such a nominal figure, it is our recommendation that the purchase be consummated as soon as possible.

Following is a description of the improvements so that if you concur with our recommendation the necessary Bill of Sale and papers can be prepared to handle the transaction:

1—SS Building consisting of office and restroom, 15′x20′
1—SS Canopy, 15′x22′
1—SS Greasing Canopy over pits, 28′x30′
1—Storage room and shop, 20′x38′ with 10′x38′ canopy

E. Kirby.

HTH:FS

(Here follow 2 Photolithographs, side folios 651-657, 658)

SERVICE STATION GALLONAGE

D. W. COLMENY
LAS TUNAS AND LIVE OAK, ARCADIA

Service Station No. 7028-F

Bulk Agency _____

	1947	1948	1949	1950	1951	1952	1953	
January					17836			
February				16961	22071			
March				17854	18308			
April				17528				
May				16906				
June				22231				
July				16906				
August				17261				
September				21751				
October				22262				
November				17628				
December				22406				
TOTAL								
AVERAGE								

651-657

Government Exhibit 17E 5094

SERVICE STATION GALLONAGE

D. W. COLMERY
LAS TUNAS AND BALDWIN, ARCADIA

Service Station No. 7027-E

Bulk Agency

	1947	1948	1949	1950	1951	1952	1953	
January					13460			
February				12600	12910			
March				12600	12900			
April				14800				
May				12620				
June				17100				
July				14800				
August				12964				
September				14800				
October				12600				
November				17085				
December				17530				
TOTAL								
AVERAGE								

50911

Government Exhibit 18E

[fol. 659] GOVERNMENT'S EXHIBIT 20-A

Seattle, Washington, October 7, 1947.

Mr. E. Kirby

Subject: R. J. De Longe, Operator SS #819-D, Olympia, Washington

In line with our conversation I am listing events leading up to the present situation at Service Station 819-D, Olympia, Washington:

1. R. J. DeLonge was installed as operator at this service station on November 1st, 1946 and during the period of time that he was operating this station he did an outstanding job in gallonage through this unit. Yet approximately 4 weeks ago he contacted our Agent Orville Kisor at Olympia, and requested permission to sell his inventory of stock and equipment.

2. R. J. DeLong advertised the stock and equipment at this station for sale and had several parties interested in purchasing, but apparently was unable to reach an agreement with any of his prospective purchasers.

3. Stan Winters, manager for the operator of the GP unit in Seattle at 6th and Olive was interested in this service station, but did not desire to purchase that portion of the inventory which pertained to motor parts and motor repair equipment. Mr. Winters was known to Orville Kisor in the past, but was contacted by our Merchandiser J. E. Knudson when he was advised that DeLonge wished to sell his inventory at this unit.

4. Merchandiser Knudson and Salesman Densmore brought Operator DeLonge and Winters together, Monday, September 22nd, 1947 to reach an agreement and sale so that Winters could be checked into this service station as operator.

5. On this date (September 22, 1947) Will Derig, Olympia Attorney, representing DeLong picked up from our representatives the 306 Mutual Termination Agreement unsigned by DeLonge. When this Attorney left the station he took these forms with him, and according to information developed later left the city of Olympia for 2 days with these forms still in his possession (unsigned).

6. Merchandiser Knudson and Salesman Densmore continued to supervise the transfer and sale of stock and equipment at this unit, and apparently an agreement was reached by both DeLonge and Winters wherein Winters would purchase that stock and equipment that pertained to the operation of the service station and that DeLonge would remove from the station stock and equipment that pertained to mechanical repair.

[fol. 660] 7. Although the Mutual Termination Agreement was not signed a new 542 Agreement was made by our company representative, and signed by Winters to be effective at the beginning of business September 23, 1947.

8. DeLonge left the service station at 8 o'clock the morning of September 23rd, 1947 and turned over to Winters inventory of stock and equipment remaining in the station as he states through the direction of the Richfield Representatives. No 306 Mutual Termination Agreement was signed by DeLonge. An inventory value was finally reached by both Winters and DeLonge for a value of stock and equipment transferred as of the 23rd of September in the sum of $1,603.16, although Bulk Sales Affidavit listing this amount was not filed until October 3rd, 1947.

9. Winters has been in the possession of this service station since September 23rd, 1947, and at the request of our attorney Mr. Woods signed the letter stating that he understood that the acceptance of any Form 542 Service Station Lease was subject to prior cancellation of any previous Form 542. Original of this letter is attached for your information.

10. On Saturday, October 4th, 1947 Attorney Will Derig stated that they were retained by DeLong to obtain reimbursement from Richfield Oil Corporation as follows:

(a) Value of inventory removed from station $2,047.38.

(b) Salary for DeLonge based on $300.00 per month and DeLonge's helper, Mr. Goodyear at $150.00 per month. This salary reimbursement to cover a period of two weeks for a total of $225.00. This combined with the inventory removed from the station of $2,047.38 adds up to a request of $2,272.38.

(c) In addition to this figure they desire damages in the amount of $5,000.00.

11. The Attorneys state their request on the basis—

(a) That deLonge was removed from the station by a company representative, who refused to allow DeLonge to continue as operator.

(b) That deLonge could not take the unit back because Winters had advertised that he "had taken over the one stop" and so business has passed from DeLonge to Winters. (Ads both newspaper and air).

(c) That the inventory removed from the station lost value because it was not in a place of business, and that this inventory should have been a portion of the sale to Winters.

(d) That the reduced inventory value made it impossible for DeLonge to pay off his obligations in Olympia, and that because of this he had lost his credit standing, was unable to start again in business in Olympia.

[fol. 661] 12. On this contact with the Attorneys Brodie, Derig and Parr, I requested that they place the above information in the form of a letter and direct it to your personal attention. This they stated they would do, and this letter should be in your hands the early part of this week.

H. C. Buck.

HCB:dnp

[fol. 662] GOVERNMENT'S EXHIBIT 21

Richfield Oil Corporation

155 West Washington Blvd., Los Angeles 15, California

July 25, 1947.

Mr. Clark F. Wagner
401 Kern Street
Taft, California

Dear Sir:

Richfield Oil Corporation, as "Lessor," and you, as "Lessee," have made and entered into a Service Station Lease dated the 1st day of January, 1946, by the terms of

which there was leased certain real property situated in the City of Taft, County of Kern, State of California, described in the Schedule "A" of said Service Station Lease as follows:

> "The North 85′ of Lots 29, 30, 31 and 32, Block 9, said property having a frontage of 85′ on Fourth Street and 100′ on Kern Street, in the City of Taft, County of Kern, State of California, more particularly described as the Southwest corner of 4th and Kern Streets."

together with all appurtenances thereunto belonging and with all improvements, buildings, fixtures, equipment and facilities situated on said real property and particularly described in said Schedule "A".

Said Service Station Lease is for the period commencing January 1, 1946, and continuing until terminated by either party by means of a written notice of election to terminate served on the other party at least twenty-four (24) hours prior to the effective date of termination specified in such notice.

Richfield Oil Corporation hereby notifies you that it elects to terminate said lease, effective on the 29th day of July, 1947, at the hour of 12 midnight, and hereby demands that at such time upon such date you surrender to the agent of Richfield Oil Corporation requesting such surrender the real property, improvements, buildings, fixtures, equipment and facilities leased by said Service Station Lease.

Yours truly, Richfield Oil Corporation, By — — Clune, for Division Manager.

[fol. 663] GOVERNMENT'S EXHIBIT 21-A

City of Taft

California

Office of the City Clerk

Telephone 236

August 9, 1947.

Richfield Oil Corporation
P. O. Box 7927 Del Valle Station
Los Angeles 15, California

Attention: Mr. J. T. Foster

Dear Sir:

The Taft City Council has authorized me to convey to you that they consider Mr. Clark Wagner a representative of the highest caliber.

Our letter to you of June 21, was with the thought of your Company providing Mr. Wagner with proper facilities for conducting his business and in no way was intended to harm or effect Mr. Wagner or his business.

We all have the highest regards for Mr. Wagner and his business methods and we believe this is also the feeling of the entire community.

Sincerely, M. L. Eiland.

[fol. 664] GOVERNMENT'S EXHIBIT 21-B

Bakersfield, California, August 10, 1947.

Mr. J. T. Foster
Asst. Div. Sales Mgr.
Richfield Oil Corporation
Los Angeles, California.

SUBJECT: CLARK F. WAGNER—FORMER LESSEE, L. O. UNIT #1011, 4TH & KERN STREET, TAFT, CALIFORNIA.

The above subject former L. O. dealer at 4th. & Kern Street, Taft, California averaged 16,084 gallons per month for a twelve month period from July 1, 1946 to June in-

clusive 1947. The oil ratio for same period of time has been 1.35. Since making the change the Richfield has possibly lost 8 to 10,000 gallons of the gallonage at this station. It is my understanding that many credit card holders have returned their cards but not acting solely on their own volition as Mr. Wagner and some meddling friends have made statements that are grossly untrue in regards to the real reason for termination.

Mr. Wagner has stocked and sold Pennzoil and Quaker State Oils and was asked many times for the discontinuance of such practice but continued to sell these oils even though promises were made to effect that no more of this oil would be stocked in our station. His attitude towards T. B. A. was essentially wrong and purchased only when pressured. His general operation was extremely untidy and the stead fast excuse was that Richfield has not kept their promises to do certain improvements and he saw no reason why he should be so fastidious. The rest rooms were kept just half clean and when asked to pay just a little more heed to the cleanliness the answer would be why doesn't the Richfield paint their rest rooms at least twice a year. This type of lip and insolence was tolerated in hopes that Mr. Wagner would get in line and we as a company could maintain the gallonage desired.

Some time in June the Judge for City of Taft wrote to your office and asked that car washing be discontinued at our L. O. Unit #1011 as the water was creating a hazzard which was running accross Kern Street (U. S. Hi-way 399). Upon receipt of your letter and Mr. Shaffer's I notified Mr. Wagner to discontinue all car washing. The next day I found him washing another car and asked him why he proposed to do other than instructed. It seems that this car belonged to one of Taft City councilman and was told supposedly that it was OK and why should Richfield and I be so concerned. I at that time told him that this councilman nor others were to be concerned with our wishes and again told him to stop washing cars. At a later date Judge Eiland and I were at L. O. Unit #1011 discussing the situation and I again asked Mr. Wagner if he was still washing cars and his answer was NO. However I knew from other sources that car washing was still being continued. On

July 21, 1947 Judge Eiland called me in Bakersfield and gave me the following information on two different cars that had been washed and asked that it be discontinued.

Ford—License Number 99 E 499 Sunday afternoon, July 20th.

Maroon Buick—License Number 4T 9767, at 1:15 P. M., July 17th.

After this I could plainly see that Mr. Wagner did not intend to co-operate and do the essential things for better [fol. 665] service station operation. Thus, I elected to terminate Mr. Wagner's service station lease at L. O. #1011, take the gallonage loss and affiliate ourselves with lessee who will appreciate the Company and market in a manner fitting to our policys.

Trusting that this explaination shall clarify the reasons for Mr. Wagner's termination as lessee of our L. O. Unit #1011.

F. C. Kelley, Terr. Slsm.

cc: B. J. Shaffer

Government Exhibit 22G

SURVEY OF SERVICE STATION OPERATIONS

Dealer's Name R.R. MATHIS Date JUNE 19

Street Address _____ City FRANKLIN Agency HILLSBORO

SS# 401-22-[illegible] Operating Hours _____ m. To _____ m. Last Survey Made _____ 19

Total Sales Last Month:— Gasoline _____ Motor Oil _____ Motor Oil Ratio _____

MAINTENANCE	S	U	C	TBC
MAINTENANCE SCHEDULED	✓			
BUILDING EXTERIOR CLEAN	✓			
BUILDING INTERIOR CLEAN	✓			
CONDITION of PAINT	–			
YARD and DRIVEWAYS				
PLANTING AREA	✓			
ADJOINING AREA	✓			
WINDOWS CLEAN	✓			
WINDOW DISPLAYS SET UP	✓			
MERCHANDISE CLEAN	✓			
LIGHTS - Proper Size - Working	✓			
UNAUTHORIZED SIGNS				✓
SIGNS CLEAN (Ridge, etc.)	✓			
PUMPS CLEAN - Prices Posted	✓			
FIRE EXTINGUISHERS - Filled - Tagged	✓			
OIL DISPENSERS - Clean - Decaled	✓			
CAN RACKS - Clean - Filled	✓			
LUBE DEPARTMENT				
COMPRESSOR - Clean - Oil Changed	✓			
LUBE EQUIPMENT - Clean - Decaled	✓			
HOIST - Clean - Working Properly	✓			
FLOOR - Clean - Sump Working Properly	✓			
ADEQUATE TOOLS - Well Arranged	✓			
PROPER DISPOSAL of REFUSE	✓			
REST ROOMS				
WALLS CLEAN	S			
FLOOR CLEAN	S			
TOILET BOWL CLEAN	S			
WASH BASIN CLEAN	S			
MIRRORS - Clean and in place	S			
WASTE BASKETS and Sanitary Receptacles	S			
PAPER TOWELS	–	–		
BORAXO DISPENSER FILLED	S			
TOILET TISSUE	S	S		
SEAT COVERS	–	–		
COAT HOOKS	S	S		
DOORS UNLOCKED	S	S		
CHECKED EVERY HOUR				

PERSONAL APPEARANCE	S	U	C	TBC
NEAT and CLEAN	✓			
SHAVE and HAIRCUT	✓			
AUTHORIZED JACKET	✓			
AUTHORIZED UNIFORM	✓			
SALES and SERVICE AIDS				
Performs "5" Point Safety Service				
Observance of Plus Sales				
Oil Napkins and Dispenser				
Approved Windshield Cleaning Equip.				
Credit Card Clip Boards				
Job Tickets				
Lube Procedure Charts				
Seat and Fender Covers				
Battery Service Equipment				
Tire Service Equipment				
Service Record Stickers				
P and C Cards - Box and Index				
Date Book				
Follow-Up Cards				
Rubber Name Stamp				
MANAGEMENT				
Adequate Bookkeeping System				
Monthly and Daily Sales Ratios				
Stock Inventory				
Federal and State Taxes				
City and County Licenses				
MARKET DEVELOPMENT				
Profit Analysis				
Market Analysis				
Prospect List				
Market Area Map and Pins				
3 x 5 Prospect Cards				
Daily Calls Made				
New Customers Develop				
Credit Card Applications				
Use of Company Advertising				
Use of Personal Advertising				

RICHFIELD DEALER

Acknowledged [illegible]

RICHFIELD REPRESENTATIVE

By R.R. Thomas

Write on reverse side what you did to help this dealer.

666

317

Government Exhibit 23A

RICHFIELD OIL CORPORATION

155 WEST WASHINGTON BLVD. • LOS ANGELES 15 • CALIFORNIA

January 9, 1946.

James T. Smith
Southwest corner of Imperial Hwy.
and Figueroa Street
Los Angeles, California

Dear Sir:

Richfield Oil Corporation, as "Lessor," and you, as "Lessee," have made and entered into a Service Station Lease dated the 9th day of January, 19 42, by the terms of which there was leased certain real property situated in the City of Los Angeles, County of Los Angeles, State of California, described in the Schedule "A" of said Service Station Lease as follows:

Lots 9, 10 and the northerly 14 feet of Lot 11, except the westerly 40 feet thereof, Block "A", Replat of Figueroa Heights as per map recorded in Bk 11, Page 103, of Maps

together with all appurtenances thereunto belonging and with all improvements, buildings, fixtures, equipment and facilities situated on said real property and particularly described in said Schedule "A".

Said Service Station Lease is for the period commencing January 12, 19 42, and continuing until terminated by either party by means of a written notice of election to terminate served on the other party at least twenty-four (24) hours prior to the effective date of termination specified in such notice.

Richfield Oil Corporation hereby notifies you that it elects to terminate said Lease, effective on the 11th day of January, 19 46, at the hour of 10:00 a.m. and hereby demands that at such time upon such date you surrender to the agent of Richfield Oil Corporation requesting such surrender the real property, improvements, buildings, fixtures, equipment and facilities covered by said Service Station Lease.

Yours truly,

RICHFIELD OIL CORPORATION,

By [illegible]

667

Government Exhibit 25

File 10-4
884115

Inventory K. Kohl 1-27-45
1046 11T Ave So

Product		CAE	gals	Total
Richfield				
Weslube	Bulk	30	21	
Richlube	24/1	10	12	
"	Bulk	20	20	
"	24/1	30	18	
"	Bulk	30	1.06	
"	Bulk	40	20	
Rich Penn		10	0	
"	Bulk	20	53	
	"	30	83	
	"	40	15	Richfield
Penn Case		30	212	560 Note
Royal Windsor				
11 bls Bulk Misc.			583	
33 2 gal cans			66	Royal Windsor
Hibrys			55	704 Note
Pennzoil				
24/1		30	04	
5 gal Pails		30	20	
Bulk		10	25	

...d be intended in arriving
...Kohl's S.S. as of 1/27/45.

...ood between Rickfield & Kohl
...House - No more purchased and
...of by him, other than across our
...tion & check will be maintained
...foreign stock has been depleted
W E Hamilton

1046 11T Ave So

Product		CAE	gals	Total	
Richfield					
Weslube	Bulk	30	21		
Richlube	24/1	10	12		
"	Bulk	20	20		
"	24/1	30	18		
"	Bulk	30	1.06		
"	Bulk	40	20		
Rich Penn		10	0		
"	Bulk	20	53		
	"	30	83		
	"	40	15	Richfield	
Penn Case		30	212	560	Note
Royal Windsor					
11 kls Bulk Misc.			583		
33 2 gal cans			66	Royal Windsor	
Hibers			55	704	Note
Pennzoil					
24/1		30	04		
5 gal Pails		30	20		
Bulk		10	25		
		20	10	Pennzoil	
		30	25	54	

...ight be intended in arriving
...t Kolb's S.S. as of 1/27/45.

...enslow & between Pickfield & Kolb
...e Home - No more powerhouse and
...ed of by him, other than as one
...crutiny & check will be maintained
...ll foreign stock has been depleted
W E Hamilton

PRODUCT		SAE	GALS	TOTAL
RICHFIELD	Bulk	40		
WESLUBE	"	30	21	
RICHLUBE	24/1	10	12	
"	Bulk	20	20	
"	24/1	30	18	
"	Bulk	30	106	
"	"	40	20	
RICH PENN		10	0	
"	Bulk	20	53	
	"	30	80	
	"	40	15	RICHFIELD 560
	"			
PENN. BASE		30	222	
ROYAL WINDSOR			583	
11 bbls. Bulk Misc.			66	
33 - 2 gal. cans			55	ROYAL WINDSOR 704
Bi-tops				
PENNZOIL				
24/1		30	64	
5 gal. pails		30	20	
Bulk		10	25	PENNZOIL 84
		20	10	
		30	25	
RINGFREE				
Bulk		20	30	RINGFREE 30
TRITON				
24/1		30	3-3/4	TRITON 3-3/4
VALVOLINE				VALVOLINE 20
5 gal. pails		30	20	
PENNZOIL SUZIP (Flushing Oil)			15	
Wheel Bearing			25 lbs.	
Universal			35 "	
Chassis			175 "	
RICHFIELD GREROIL		90	115 lbs.	
		140	230 "	

PRODUCT	SAE	GALS	TOTAL
24/1	10	18	
Bulk	20	0	
"	30	106	
24/1	30	5	
Bulk	40	12	
"	10	20	
"	20	5	
	30		
"	40	12	
Jewel	20		
	30		
	30	106	RICHFIELD 264
9 Drums-Bulk		477	
30-2 gal. cans		60	ROYAL WINDSOR 537
Bulk	30	30	
2-5 gal Pails	30	10	
24/1	36 Qts.	3	PENNZOIL 43
Bulk	20	20	RINGFREE 20
24/1		3-3/4	TRITON 3-3/4
5 gal. Pails		10	VALVOLINE 10
		10	
		25 lbs.	
		35 "	
		? "(Last is in Gun)	
	90	115 lbs.	
	140	230 "	
Chassis		115 "	

Seattle, Washington March 20, 5.

320

Mr. L. H. Bagby

SUBJECT: KOHL LUBRICANT
INVENTORY MARCH 17/45
vs " JANUARY 27/45

Dear Sir:

Attached please find Inventory as of March 17, in duplicate on Kohl Service Station.

In comparing Inventory of January 27, with this one, you will note his Inventory is going down fairly rapidly.

Richfield Products	decreased	276	gallons
Royal Windsor	"	167	"
Ring free	"	10	"
Pennzoil	"	41	"
Triton	"	0	"
Valvoline	"	10	"
Total	"	504	

U. S. vs. RICHFIELD (6896-Y)

SUBPOENA DUCES TECUM - NO. 2

PARAGRAPH NO. II ITEM NO. 6 v

This makes a decrease of 252 gallons per month. He has purchased in this almost two month period - 179 Motor Oil and 335 pounds of Grease from Richfield and claims no products purchased from any competitor.

WEH:C Enc.

W. E. Hamilton

670

[fol. 671] GOVERNMENT'S EXHIBIT 26-A

UNITED STATES v. RICHFIELD OIL CORPORATION

Civil Action No. 6896-Y

Compilation of Certain Data and Evidence Called For from the Defendant in a Subpoena Duces Tecum Dated February 7, 1951, Served on Defendant.

[fol. 672] UNITED STATES v. RICHFIELD OIL CORPORATION

Civil Action No. 6896-Y

Index to Attached Stipulation

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* * * * * * *

[fol. 673] Subpoena Duces Tecum

Paragraph No. 2

The originals of all Form 542 Richfield Service Station Leases in full force and effect ... of December 31, for each

year 1938 to 1950, inclusive, between Richfield and operators of service stations owned by defendant, or leased by defendant from a lessor who is a person, firm, or corporation other than the operator of the service station. In lieu of the requested documents, a compilation prepared from said documents showing the location, by states, of the number of said agreements in full force and effect as of December 31, for each year from 1938 to 1950, inclusive, will be accepted.

For response thereto, defendant submits a compilation as follows:

Schedule No.	I	All States
Schedule No.	II	Arizona
Schedlue No.	III	California
Schedule No.	IV	Idaho
Schedule No.	V	Nevada
Schedule No.	VI	Oregon
Schedule No.	VII	Washington

Note: The compilation includes Service Station Leases entered into by the defendant with the operators of retail service station outlets on Form 542. The defendant refers to this type of outlet as an L. O. station. The lease form of the defendant on this type of outlet is represented by Government Exhibits 1, 1a to g, inclusive, and by Government Exhibit 2. The schedules include L. O. truck stations on Form No. 1095, the aggregate number of which in All States did not exceed fifteen (15) in any year.

[fol 674] Paragraph No. 2

Schedule No. I

All States

Form 542—L. O. Stations

December 31st of	
1938	1103
1939	1233
1940	1412
1941	1401
1942	1215
1943	1283
1944	1209
1945	1168
1946	1135
1947	1120
1948	1202
1949	1330
1950	1343

[fol. 675] Paragraph No. 2

Schedule No. II

Arizona

Form 542—L. O. Stations

December 31st of	
1938	83
1939	97
1940	100
1941	94
1942	68
1943	74
1944	68
1945	69
1946	64
1947	66
1948	70
1949	71
1950	70

[fol. 676]

Paragraph No. 2

Schedule No. III

California

Form 542—L. O. Stations

December 31st of	
1938	769
1939	847
1940	914
1941	883
1942	724
1943	806
1944	776
1945	752
1946	744
1947	726
1948	775
1949	855
1950	870

[fol. 677]

Paragraph No. 2

Schedule No. IV

Idaho

Form 542—L. O. Stations

December 31st of	
1938	1
1939	14
1940	16
1941	18
1942	17
1943	17
1944	16
1945	17
1946	17
1947	20
1948	22
1949	17
1950	16

[fol. 678] Paragraph No. 2

Schedule No. V

Nevada

Form 542—L. O. Stations

December 31st of	
1938	12
1939	15
1940	18
1941	20
1942	18
1943	20
1944	17
1945	19
1946	18
1947	17
1948	20
1949	21
1950	21

[fol. 679] Paragraph No. 2

Schedule No. VI

Oregon

Form 542—L. O. Stations

December 31st of	
1938	78
1939	81
1940	145
1941	152
1942	147
1943	136
1944	127
1945	123
1946	114
1947	110
1948	118
1949	147
1950	148

[fol. 680] Paragraph No. 2

Schedule No. VII

Washington

Form 542—L. O. Stations

December 31st of	
1938	160
1939	179
1940	219
1941	234
1942	241
1943	230
1944	205
1945	188
1946	178
1947	181
1948	197
1949	219
1950	218

[fol. 681] Subpoena Duces Tecum

Paragraph No. 3

The originals of all "3-C Operator's Leases, Form 668," "3-C Service Station Leases, Form 362," "3-C Operator's Sales Contracts, Form 783," "2-B Service Station Leases, Form SL-306," "2-B Subleases, Form SD 301 SL-2B," "Agent's Commission Agreements, Form SD 302 ACA 2-B," and "Sales Contracts, Form 398," in full force and effect as of December 31, for each year 1938 to 1950, inclusive, between Richfield and retail service station dealers who either own the service station or lease the service station from a lessor other than Richfield. In lieu of the requested documents, a compilation prepared from said records, separately stated, showing the location, by states, the number of service stations which are the subject matter of any of said leases, subleases, or agreements, as of December 31, for each year from 1938 to 1950, inclusive, and the number of contracts or agreements containing any provi-

sion that the service station dealer or operator shall purchase his entire requirements of gasoline, lubricating oils, and greases from Richfield, specifying the title and form number of each, will be accepted.

For response thereto, defendant submits a compilation as follows:

Schedule No.	I	All States
Schedule No.	II	Arizona
Schedule No.	III	California
Schedule No.	IV	Idaho
Schedule No.	V	Nevada
Schedule No.	VI	Oregon
Schedule No.	VII	Washington

Government Exhibits 3, 3a to 3d, inclusive, are representative of the forms of written leases and sales agreements entered into by the defendant with the operators of the [fol. 682] type of retail service station outlet which the defendant refers to as a 2-B outlet or station. Government's Exhibits 4, 4a to 4d, inclusive, are representative forms entered into by the defendant with the operators of the type of general service station outlet which the defendant refers to as a 3-C outlet or station.

[fol. 683]

Paragraph No. 3

Schedule No. I

All States

3-C Stations (early form designated 2-B Stations)

December 31st of	Number of Service Stations	Entire Requirements Provision
1938	512	...
1939	495	...
1940	436	...
1941	369	...
1942	298	...
1943	160	...
1944	87	...
1945	42	2*
1946	117	93*
1947	198	182*
1948	252	53*
1949	247	26*
1950	261	7*

* The title and form number applying in these instances is defendant's Form 783, Operator's Sales Contract, print dates: 11–45 or 10–46. The above figures do not indicate that the contracts listed were executed in the years shown, such designated forms of Operator's Sales Contract having been discontinued in August 1948.

[fol. 684]

Paragraph No. 3

Schedule No. II

Arizona

3–C Stations (early form designated 2–B Stations)

December 31st of	Number of Service Stations	Entire Requirements Provision
1938	...	...
1939	...	...
1940	...	...
1941	...	...
1942	...	...
1943	...	...
1944	...	...
1945	...	...
1946	7	7*
1947	14	13*
1948	19	5*
1949	17	1*
1950	17	...

* The title and form number applying in these instances is defendant's Form 783, Operator's Sales Contract, print dates: 11–45 or 10–46. The above figures do not indicate that the contracts listed were executed in the years shown, such designated forms of Operator's Sales Contract having been discontinued in August 1948.

[fol. 685]

Paragraph No. 3

Schedule No. III

California

3–C Stations (early form designated 2–B Stations)

December 31st of	Number of Service Stations	Entire Requirements Provision
1938	269	...
1939	248	...
1940	207	...
1941	162	...
1942	118	...
1943	60	...
1944	26	...
1945	10	1*
1946	34	30*
1947	79	79*
1948	109	17*
1949	110	8*
1950	116	3*

* The title and form number applying in these instances is defendant's Form 783, Operator's Sales Contract, print dates: 11–45 or 10–46. The above figures do not indicate that the contracts listed were executed in the years shown, such designated forms of Operator's Sales Contract having been discontinued in August 1948.

[fol. 686]

Paragraph No. 3

Schedule No. IV

Idaho

3-C Stations (early form designated 2-B Stations)

December 31st of	Number of Service Stations	Entire Requirements Provision
1938	1	...
1939	1	...
1940	1	...
1941	1	...
1942	1	...
1943	...	...
1944	...	...
1945	...	...
1946	...	...
1947	1	1*
1948	1	1*
1949	...	...
1950	...	...

* The title and form number applying in these instances is defendant's Form 783, Operator's Sales Contract, print dates: 11-45 or 10-46. The above figures do not indicate that the contracts listed were executed in the years shown, such designated forms of Operator's Sales Contract having been discontinued in August 1948.

[fol. 687]

Paragraph No. 3

Schedule No. V

Nevada

3-C Stations (early form designated 2-B Stations)

December 31st of	Number of Service Stations	Entire Requirements Provision
1938	3	...
1939	2	...
1940	1	...
1941	1	...
1942	1	...
1943	1	...
1944	1	...
1945	1	...
1946	1	1*
1947	2	2*
1948	3	...
1949	3	...
1950	3	...

* The title and form number applying in these instances is defendant's Form 783, Operator's Sales Contract, print dates: 11-45 or 10-46. The above figures do not indicate that the contracts listed were executed in the years shown, such designated forms of Operator's Sales Contract having been discontinued in August 1948.

[fol. 688]

Paragraph No. 3

Schedule No. VI

Oregon

3–C Stations (early form designated 2–B Stations)

December 31st of	Number of Service Stations	Entire Requirements Provision
1938	80	...
1939	82	...
1940	77	...
1941	72	...
1942	60	...
1943	23	...
1944	13	...
1945	7	...
1946	23	20*
1947	38	33*
1948	44	15*
1949	43	9*
1950	45	1*

* The title and form number applying in these instances is defendant's Form 783, Operator's Sales Contract, print dates: 11–45 or 10–46. The above figures do not indicate that the contracts listed were executed in the years shown, such designated forms of Operator's Sales Contract having been discontinued in August 1948.

[fol. 689]

Paragraph No. 3

Schedule No. VII

Washington

3–C Stations (early form designated 2–B Stations)

December 31st of	Number of Service Stations	Entire Requirements Provision
1938	159	...
1939	162	...
1940	150	...
1941	133	...
1942	118	...
1943	76	...
1944	47	...
1945	24	...
1946	52	35*
1947	64	54*
1948	76	15*
1949	74	8*
1950	80	3*

* The title and form number applying in these instances is defendant's Form 783, Operator's Sales Contract, print dates: 11–45 or 10–46. The above figures do not indicate that the contracts listed were executed in the years shown, such designated forms of Operator's Sales Contract having been discontinued in August 1948.

[fol. 690] Subpoena Duces Tecum

Paragraph No. 4

The originals of all "Form 337 Sales Contracts" and "Form 398 Sales Contracts" between Richfield and any retail service station dealer who either owns the service station or leases the service station from a lessor other than defendant and who has no lease or sublease with Richfield, as of December 31, for each year from 1938 to 1950, inclusive. In lieu of the requested documents, a compilation prepared from such records showing the location, by states, and the number of said agreements, separately stated as to form number, in full force and effect as of December 31, for each year from 1938 to 1950, inclusive, will be accepted.

For response thereto defendant submits a compilation as follows:

Schedule No.	I	All States
Schedule No.	II	Arizona
Schedule No.	III	California
Schedule No.	IV	Idaho
Schedule No.	V	Nevada
Schedule No.	VI	Oregon
Schedule No.	VII	Washington

Government Exhibits 5, 5a to 5i, inclusive, are representative of the forms of written sales contracts entered into by the defendant with the operators of the type of retail service station outlet, which the defendant refers to as a "337" or Dealer station. Form 398 was used only with the 3-C (2-B type) stations; and was not used with stations of the nature above described.

[fol. 691]

Paragraph No. 4

Schedule No. I

All States

337 Stations

December 31st of	
1938	556
1939	606
1940	615
1941	708
1942	475
1943	605
1944	629
1945	881
1946	1046
1947	1061
1948	1136
1949	1204
1950	1361

[fol. 692]

Paragraph No. 4

Schedule No. II

Arizona

337 Stations

December 31st of	
1938	96
1939	49
1940	60
1941	75
1942	48
1943	46
1944	34
1945	62
1946	82
1947	69
1948	73
1949	73
1950	74

[fol. 693]

Paragraph No. 4

Schedule No. III

California

337 Stations

December 31st of	
1938	218
1939	235
1940	297
1941	340
1942	254
1943	311
1944	311
1945	393
1946	467
1947	472
1948	508
1949	559
1950	695

[fol. 694]

Paragraph No. 4

Schedule No. IV

Idaho

337 Stations

December 31st of	
1938	—
1939	7
1940	7
1941	12
1942	10
1943	15
1944	13
1945	21
1946	25
1947	28
1948	29
1949	36
1950	40

[fol. 695] Paragraph No. 4

Schedule No. V

Nevada

337 Stations

December 31st of	
1938	6
1939	10
1940	10
1941	12
1942	9
1943	11
1944	4
1945	11
1946	9
1947	16
1948	15
1949	16
1950	22

[fol. 696] Paragraph No. 4

Schedule No. VI

Oregon

337 Stations

Deeember 31st of	
1938	119
1939	162
1940	111
1941	124
1942	64
1943	110
1944	126
1945	173
1946	191
1947	183
1948	202
1949	215
1950	221

[fol. 697] Paragraph No. 4

Schedule No. VII

Washington

337 Stations

December 31st of	
1938	117
1939	143
1940	130
1941	145
1942	90
1943	112
1944	141
1945	221
1946	272
1947	293
1948	309
1949	305
1950	309

[fol. 698] Subpoena Duces Tecum

Paragraph No. 5

The originals of all "Painting Agreements" between Richfield and any service station operator, as of December 31, for each year from 1938 to 1950, inclusive. In lieu of the requested documents, a compilation prepared from said records showing the location, by states, and the number of service stations subject to each of the forms of agreements referred to in paragraphs 2, 3, and 4, above, which are the subject matter of any such "Painting Agreements," as of December 31, for each year 1938 to 1950, inclusive, will be accepted.

For response thereto, defendant submits a compilation as follows:

December 31st of	(1)	(2)	(3)	(4)
1938	109	349	98	556
1939	119	380	107	606
1940	121	385	109	615
1941	139	444	125	708
1942	93	298	84	475
1943	119	379	107	605
1944	123	394	112	629
1945	173	552	156	881
1946	205	656	185	1,046
1947	208	665	188	1,061
1948	223	712	201	1,136
1949	236	755	213	1,204
1950	267	853	241	1,361

Note: (1) This column reflects the number of 337 Sales Contracts, in effect as of the date indicated, without any accompanying Painting Agreement.

(2) This column reflects the total number of 337 Sales Contracts, in effect as of the date indicated, accompanied by a Painting Agreement signed concurrently with the 337 Sales Contract.

(3) This column reflects the total number of 337 Sales Contracts, in effect as of the dates indicated, where a Painting Agreement was executed subsequent to the execution of [fol. 699] the 337 Sales Contract.

(4) This column reflects the sum of columns 1, 2, and 3 or the total number of 337 Sales Contracts in effect as of the date indicated. Government Exhibits 5a, 5c, 5e, and 5f are representative of the forms of Painting Agreements entered into by the defendant and the operators of the 337 or dealer type of outlet.

[fol. 700] Subpoena Duces Tecum

Paragraph No. 6

The original records, or a compilation prepared therefrom, showing for each year from 1938 to 1950, inclusive,

the total gallonage of gasoline and the dollar value thereof, separately stated by states, sold or delivered for resale by Richfield to each of the classifications of stations subject to the respective agreements, contracts, leases, or subleases referred to in paragraphs 2, 3, and 4 above.

For response thereto defendant submits a compilation as follows:

Schedule No. I-(a)	L. O. Stations	All States
Schedule No. I-(b)	L. O. Stations	Arizona
Schedule No. I-(c)	L. O. Stations	California
Schedule No. I-(d)	L. O. Stations	Idaho
Schedule No. I-(e)	L. O. Stations	Nevada
Schedule No. I-(f)	L. O. Stations	Oregon
Schedule No. I-(g)	L. O. Stations	Washington
Schedule No. II-(a)	Dealer 3-C Stations	All States
Schedule No. II-(b)	Dealer 3-C Stations	Arizona
Schedule No. II-(c)	Dealer 3-C Stations	California
Schedule No. II-(d)	Dealer 3-C Stations	Idaho
Schedule No. II-(e)	Dealer 3-C Stations	Nevada
Schedule No. II-(f)	Dealer 3-C Stations	Oregon
Schedule No. II-(g)	Dealer 3-C Stations	Washington
Schedule No. III-(a)	Dealer Stations	All States
Schedule No. III-(b)	Dealer Stations	Arizona
Schedule No. III-(c)	Dealer Stations	California
Schedule No. III-(d)	Dealer Stations	Idaho
Schedule No. III-(e)	Dealer Stations	Nevada
Schedule No. III-(f)	Dealer Stations	Oregon
Schedule No. III-(g)	Dealer Stations	Washington

The following compilations are divided into three major schedules to conform to the three types of retail service station outlets involved in the instant proceeding. Schedule [fol. 701] I refers to the type of outlet represented by Government Exhibits 1, 1a to 1g, inclusive, and 2, and which the defendant refers to as an L. O. station. Schedule II refers to the type of outlet represented by Government Exhibits 3, 3a to 3d, inclusive, and 4, 4a to 4d, inclusive, and which the defendant refers to as a 2-B and 3-C station. Schedule III represents the type of outlet represented by Government Exhibits 5, 5a to 5i, inclusive, and which the defendant refers to as a Dealer or 337 station.

[fol. 702]

Paragraph No. 6
Schedule No. I-(a)
All States
L. O. Stations

Year	Gallons (000 Omitted)	Value
1938	75,772	$ 8,158,352.00
1939	84,037	9,013,051.00
1940	94,892	9,345,155.00
1941	104,459	10,456,472.00
1942	97,525	7,669,980.00
1943	73,243	7,503,495.00
1944	71,851	7,727,544.00
1945	96,909	10,401,716.00
1946	123,413	13,957,560.00
1947	120,898	15,489,336.00
1948	125,018	18,311,770.00
1949	142,953	21,739,724.00
1950	160,759	23,790,968.00

[fol. 703]

Paragraph No. 6
Schedule No. I-(b)
Arizona
L. O. Stations

Year	Gallons (000 Omitted)	Value
1938	3,076	$ 384,500.00
1939	4,010	457,140.00
1940	4,058	442,322.00
1941	4,367	489,104.00
1942	3,355	372,405.00
1943	3,265	375,475.00
1944	3,190	392,370.00
1945	4,716	575,352.00
1946	5,917	751,459.00
1947	5,992	868,840.00
1948	6,408	1,050,912.00
1949	7,120	1,213,248.00
1950	7,594	1,281,867.00

[fol. 704]

Paragraph No. 6
Schedule No. I-(c)
California
L. O. Stations

Year	Gallons (000 Omitted)	Value
1938	57,227	$ 5,951,608.00
1939	62,968	6,548,672.00
1940	70,823	6,728,185.00
1941	73,650	7,070,400.00
1942	53,146	4,942,578.00
1943	51,276	4,973,772.00
1944	50,188	5,169,364.00
1945	70,059	7,286,136.00
1946	88,778	9,765,580.00
1947	87,041	10,793,084.00
1948	87,421	12,326,361.00
1949	98,302	14,450,394.00
1950	111,289	15,769,651.00

[fol. 705]

Paragraph No. 6
Schedule No. I-(d)
Idaho
L. O. Stations

Year	Gallons (000 Omitted)	Value
1938	29	$ 2,813.00
1939	411	55,485.00
1940	914	113,336.00
1941	1,235	142,025.00
1942	756	99,792.00
1943	757	102,195.00
1944	757	102,952.06
1945	817	109,478.00
1946	1,380	193,200.00
1947	1,332	207,792.00
1948	1,475	265,500.00
1949	1,390	260,903.00
1950	1,415	262,483.00

[fol. 706]

Paragraph No. 6
Schedule No. I–(e)
Nevada
L. O. Stations

Year	Gallons (000 Omitted)	Value
1938	547	$ 62,358.00
1939	748	87,822.00
1940	888	99,451.00
1941	1,221	139,194.00
1942	1,052	122,032.00
1943	875	105,875.00
1944	771	94,062.00
1945	1,206	148,338.00
1946	1,936	245,872.00
1947	2,027	293,915.00
1948	2,281	371,803.00
1949	2,626	447,733.00
1950	2,819	479,794.00

[fol. 707]

Paragraph No. 6
Schedule No. I–(f)
Oregon
L. O. Stations

Year	Gallons (000 Omitted)	Value
1938	3,879	$ 449,964.00
1939	4,466	518,056.00
1940	5,884	629,588.00
1941	9,653	1,061,830.00
1942	7,532	851,116.00
1943	6,328	746,694.00
1944	6,234	729,378.00
1945	7,918	918,488.00
1946	9,516	1,141,920.00
1947	9,391	1,249,003.00
1948	11,226	1,762,482.00
1949	15,088	2,441,239.00
1950	16,395	2,659,269.00

[fol. 708]

Paragraph No. 6
Schedule No. I–(g)
Washington
L. O. Stations

Year	Gallons (000 Omitted)	Value
1938	11,014	$1,277,624.00
1939	11,444	1,304,616.00
1940	12,326	1,294,230.00
1941	14,334	1,519,404.00
1942	11,684	1,250,188.00
1943	10,689	1,175,790.00
1944	10,712	1,221,168.00
1945	12,194	1,353,534.00
1946	15,887	1,842,892.00
1947	15,116	2,040,660.00
1948	16,206	2,495,724.00
1949	18,427	2,926,207.00
1950	21,247	3,337,904.00

[fol. 709]

Paragraph No. 6
Schedule No. II–(a)
All States
3–C Stations

Year	Gallons (000 Omitted)	Value
1938	38,641	$4,160,466.00
1939	34,160	3,663,694.00
1940	31,768	3,128,579.00
1941	29,421	2,945,078.00
1942	19,841	1,962,980.00
1943	13,904	1,424,417.00
1944	6,484	697,351.00
1945	4,563	489,769.00
1946	6,257	707,644.00
1947	11,835	1,516,289.00
1948	17,050	2,497,366.00
1949	19,813	3,045,536.00
1950	20,385	3,069,987.00

[fol. 710]

Paragraph No. 6
Schedule No. II–(b)
Arizona
3–C Stations

Year	Gallons (000 Omitted)	Value
1938	—	—
1939	—	—
1940	—	—
1941	—	—
1942	—	—
1943	—	—
1944	—	—
1945	—	—
1946	322	40,894.00
1947	675	97,875.00
1948	1,036	169,904.00
1949	1,232	209,933.00
1950	1,139	192,263.00

[fol. 711]

Paragraph No. 6
Schedule No. II–(c)
California
3–C Stations

Year	Gallons (000 Omitted)	Value
1938	24,228	$2,519,712.00
1939	20,012	2,081,248.00
1940	17,955	1,705,725.00
1941	15,690	1,506,240.00
1942	10,407	967,851.00
1943	7,207	699,079.00
1944	2,432	250,496.00
1945	1,534	159,536.00
1946	1,684	185,240.00
1947	4,333	537,292.00
1948	8,424	1,187,784.00
1949	10,699	1,572,753.00
1950	10,785	1,528,235.00

[fol. 712]

Paragraph No. 6
Schedule No. II–(d)
Idaho
3–C Stations

Year	Gallons (000 Omitted)	Value
1938	63	$6,111.00
1939	39	5,265.00
1940	49	6,076.00
1941	45	5,175.00
1942	7	924.00
1943	—	—
1944	—	—
1945	—	—
1946	—	—
1947	8	1,248.00
1948	11	1,980.00
1949	6	1,126.00
1950	—	—

[fol. 713]

Paragraph No. 6
Schedule No. II–(e)
Nevada
3–C Stations

Year	Gallons (000 Omitted)	Value
1938	236	$26,904.00
1939	299	35,581.00
1940	261	29,229.00
1941	248	28,272.00
1942	213	24,708.00
1943	171	20,691.00
1944	135	16,470.00
1945	165	20,295.00
1946	29	3,683.00
1947	58	8,410.00
1948	99	16,137.00
1949	144	24,552.00
1950	230	39,146.00

[fol. 714]

Paragraph No. 6
Schedule No. II-(f)
Oregon
3-C Stations

Year	Gallons (000 Omitted)	Value
1938	4,361	$505,876.00
1939	4,260	494,160.00
1940	3,940	421,580.00
1941	3,896	428,560.00
1942	2,578	291,314.00
1943	1,513	177,021.00
1944	737	86,229.00
1945	507	58,812.00
1946	1,207	144,840.00
1947	2,547	338,751.00
1948	2,825	443,525.00
1949	3,110	503,198.00
1950	3,383	548,722.00

[fol. 715]

Paragraph No. 6
Schedule No. II-(g)
Washington
3-C Stations

Year	Gallons (000 Omitted)	Value
1938	9,753	$1,131,348.00
1939	9,550	1,088,700.00
1940	9,562	1,004,010.00
1941	9,541	1,011,346.00
1942	6,636	710,052.00
1943	5,012	551,320.00
1944	3,179	362,406.00
1945	2,356	261,516.00
1946	3,014	349,624.00
1947	4,213	568,755.00
1948	4,656	717,024.00
1949	4,622	733,974.00
1950	4,848	761,621.00

[fol. 716]

Paragraph No. 6
Schedule No. III–(a)
All States
337 Stations

Year	Gallons (000 Omitted)	Value
1938	12,166	$ 1,371,643.00
1939	17,365	1,920,765.00
1940	21,717	2,185,795.00
1941	31,655	3,217,595.00
1942	24,506	2,461,925.00
1943	22,634	2,354,335.00
1944	26,542	2,896,228.00
1945	36,814	4,022,199.00
1946	53,880	6,175,604.00
1947	53,954	7,011,556.00
1948	55,355	8,241,495.00
1949	60,219	9,299,439.00
1950	67,476	10,164,158.00

[fol. 717]

Paragraph No. 6
Schedule No. III–(b)
Arizona
337 Stations

Year	Gallons (000 Omitted)	Value
1938	2,041	$255,125.00
1939	878	100,092.00
1940	997	108,673.00
1941	1,555	174,160.00
1942	1,483	164,613.00
1943	1,166	134,090.00
1944	1,185	145,755.00
1945	1,555	189,710.00
1946	2,447	310,769.00
1947	2,410	349,450.00
1948	2,318	380,152.00
1949	2,688	458,035.00
1950	2,925	493,740.00

[fol. 718]

Paragraph No. 6
Schedule No. III–(c)
California
337 Stations

Year	Gallons (000 Omitted)	Value
1938	4,807	$ 499,928.00
1939	7,136	742,144.00
1940	11,191	1,063,145.00
1941	17,415	1,671,840.00
1942	14,229	1,323,297.00
1943	13,609	1,320,073.00
1944	15,005	1,545,515.00
1945	19,097	1,986,088.00
1946	27,901	3,069,110.00
1947	27,406	3,398,344.00
1948	28,136	3,967,176.00
1949	31,326	4,604,922.00
1950	37,593	5,326,928.00

[fol. 719]

Paragraph No. 6
Schedule No. III–(d)
Idaho

Year	Gallons (000 Omitted)	Value
1938	—	—
1939	199	$ 26,865.00
1940	200	24,800.00
1941	189	21,735.00
1942	324	42,768.00
1943	382	51,570.00
1944	468	63,648.00
1945	752	100,768.00
1946	1,028	143,920.00
1947	942	146,952.00
1948	1,001	180,180.00
1949	1,260	236,502.00
1950	1,481	274,725.00

[fol. 720]

Paragraph No. 6
Schedule No. III–(e)
Nevada
337 Stations

Year	Gallons (000 Omitted)	Value
1938	149	$ 16,986.00
1939	328	39,032.00
1940	244	27,328.00
1941	309	35,226.00
1942	297	34,452.00
1943	198	23,958.00
1944	124	15,128.00
1945	229	28,167.00
1946	367	46,609.00
1947	427	61,915.00
1948	445	72,535.00
1949	474	80,817.00
1950	643	109,438.00

[fol. 721]

Paragraph No. 6
Schedule No. III–(f)
Oregon
337 Stations

Year	Gallons (000 Omitted)	Value
1938	1,670	$ 193,720.00
1939	3,348	388,368.00
1940	3,962	423,934.00
1941	5,703	627,330.00
1942	3,714	419,682.00
1943	3,422	400,374.00
1944	4,514	528,138.00
1945	6,475	751,100.00
1946	9,326	1,119,120.00
1947	9,460	1,258,180.00
1948	9,794	1,537,658.00
1949	11,056	1,788,861.00
1950	11,354	1,841,619.00

[fol. 722]

Paragraph No. 6
Schedule No. III-(g)
Washington
337 Stations

Year	Gallons (000 Omitted)	Value
1938	3,499	$ 405,884.00
1939	5,476	624,264.00
1940	5,123	537,915.00
1941	6,484	687,304.00
1942	4,459	477,113.00
1943	3,857	424,270.00
1944	5,246	598,044.00
1945	8,706	966,366.00
1946	12,811	1,486,076.00
1947	13,309	1,796,715.00
1948	13,661	2,103,794.00
1949	13,415	2,130,302.00
1950	13,480	2,117,708.00

[fol. 723] Subpoena Duces Tecum

Paragraph No. 7

The original records, or a compilation prepared therefrom, showing for each year from 1938 to 1950, inclusive, the total gallonage of motor oils and greases and the dollar value thereof, separately stated by states, sold or delivered for resale by Richfield to each of the classifications of stations subject to the respective agreements, contracts, leases, or subleases referred to in paragraphs 2, 3, and 4 above, and as to any other classification of retail outlets handling Richfield brands of gasoline.

For response thereto defendant submits a compilation as follows:

Schedule No.	I	All States
Schedule No.	II	Arizona
Schedule No.	III	California
Schedule No.	IV	Idaho
Schedule No.	V	Nevada
Schedule No.	VI	Oregon
Schedule No.	VII	Washington

Note: Defendant does not maintain records reflecting a segregation as to classifications of stations. Accordingly, the above compilation includes sales and deliveries to the three types of retail service station outlets which are the three types of outlets which the defendant refers to as L. O.'s, 2-B's, or 3-C's and the 337 or Dealer type.

[fol. 724]

Paragraph No. 7
Schedule No. I
All States

Year	Gallons	Value
1938	2,647,424	$1,098,971.68
1939	2,858,290	1,239,597.29
1940	3,010,117	1,350,194.56
1941	3,273,003	1,493,320.07
1942	2,114,341	929,606.19
1943	1,751,520	904,730.99
1944	2,021,113	1,104,199.09
1945	2,916,740	1,599,356.22
1946	3,056,353	1,669,451.38
1947	3,241,263	2,022,255.58
1948	3,173,161	2,135,331.49
1949	3,290,870	2,397,278.45
1950	3,491,369	2,546,127.59

[fol. 725]

Paragraph No. 7
Schedule No. II
Arizona

Year	Gallons	Value
1938	117,995	$ 62,341.34
1939	109,731	59,653.11
1940	141,420	77,384.90
1941	151,255	84,128.51
1942	136,807	72,763.92
1943	118,635	68,408.72
1944	127,056	75,273.69
1945	184,259	116,154.82
1946	199,264	119,754.10
1947	198,850	132,170.44
1948	193,891	143,022.10
1949	192,182	148,339.76
1950	197,090	153,988.37

[fol. 726]

Paragraph No. 7
Schedule No. III
California

Year	Gallons	Value
1938	1,727,575	$ 684,599.23
1939	1,902,411	783,283.40
1940	2,002,001	854,001.08
1941	2,145,365	922,936.44
1942	1,358,501	533,357.49
1943	1,036,299	523,853.31
1944	1,284,887	688,907.21
1945	1,882,834	1,015,305.98
1946	1,957,782	1,045,740.88
1947	2,078,704	1,262,216.42
1948	1,965,501	1,250,642.27
1949	2,047,793	1,448,056.49
1950	2,221,787	1,561,003.72

[fol. 727]

Paragraph No. 7
Schedule No. IV
Idaho

Year	Gallons	Value
1938	3,237	$ 1,107.00
1939	26,926	11,356.72
1940	41,441	19,099.27
1941	42,089	18,939.79
1942	30,045	16,150.29
1943	28,320	15,824.39
1944	29,331	16,830.50
1945	41,015	23,774.25
1946	45,158	27,497.51
1947	51,990	36,305.92
1948	48,557	38,223.64
1949	49,117	40,271.44
1950	49,279	41,217.85

[fol. 728]

Paragraph No. 7
Schedule No. V
Nevada

Year	Gallons	Value
1938	20,898	$10,820.62
1939	28,395	17,356.51
1940	33,900	18,026.38
1941	40,034	21,927.14
1942	30,101	17,187.69
1943	28,600	15,577.16
1944	28,592	17,100.17
1945	48,638	28,215.14
1946	53,877	31,957.35
1947	53,781	37,907.80
1948	42,494	32,882.18
1949	47,593	39,253.70
1950	49,058	41,515.38

[fol. 729]

Paragraph No. 7
Schedule No. VI
Oregon

Year	Gallons	Value
1938	234,226	$104,361.55
1939	284,086	134,432.56
1940	278,072	136,081.88
1941	323,990	166,511.78
1942	202,993	107,413.94
1943	186,671	100,789.65
1944	217,053	120,727.71
1945	303,221	167,340.89
1946	298,952	169,728.27
1947	314,033	204,935.98
1948	352,224	256,753.81
1949	389,894	294,564.65
1950	403,509	310,928.35

[fol. 730]

Paragraph No. 7
Schedule No. VII
Washington

Year	Gallons	Value
1938	543,493	$235,741.96
1939	506,691	233,514.99
1940	513,283	245,601.05
1941	570,270	278,876.41
1942	355,894	182,732.86
1943	532,995	180,277.76
1944	334,194	185,359.81
1945	456,775	248,565.14
1946	501,320	274,773.27
1947	543,905	348,719.02
1948	570,494	413,807.49
1949	564,291	426,792.41
1950	570,646	437,473.92

[fol. 731] **Subpoena Duces Tecum**

Paragraph No. 9

The original records, or a compilation prepared therefrom, showing for the period January 1, 1938 to the date of the service of this subpoena, the name of each manufacturer or supplier, place of manufacture, and brand name of each item of automotive accessories selected, authorized, or recommended for handling or sale at retail service station outlets, handling or selling Richfield petroleum products.

For response thereto defendant submits a compilation as follows:

See Schedule I attached.

[fol. 732]

Paragraph No. 9

Schedule I

Name of Company	Place of Manufacture	Brand Name
General Tire & Rubber Company	Akron, Ohio	Bulldog & Yale tires
Goodyear Tire & Rubber Company	Akron, Ohio	Passenger Tires Goodyear All-Weather G–3 Deluxe Marathon All American Speedway Pathfinder Corsair Double Eagle Wingfoot R–1 Truck Tires Hi Miler Hi Miler Extra Tread Hard Rock Rib Hard Rock Lug Road Lug Pathfinder All Weather Stop—Start Earth Mover Sure Grip Sure Grip Studded Sure Grip Marathon All Service Rib All-Weather Trailer Earth Mover All Weather Farm Tractor and Implement Tires Tubes Deluxe Heavy Duty Red Heavy Duty Black Puncture Sealing Life Guard
Goodyear Tire & Rubber Company	Unknown	Batteries Goodyear Economy Goodyear All Weather

[fol. 733]

Goodyear Tire & Rubber Company	Unknown	Various accessory items as found in Car & Home catalogs.
Colyear Motor Sales Co.	Unknown	Miscellaneous accessory lines.
Sillers Paint & Varnish Co.	Los Angeles, Calif.	Flexoid
Willard Battery Company	Los Angeles, Calif. Portland, Oregon Cleveland, Ohio Others unknown	Willard Batteries
Champion Spark Plug Co.	Toledo, Ohio	Champion Spark Plugs and accessory parts
Mac's Super Gloss Co.	Los Angeles, Calif.	Various Mac's Cleaners & Polishes

Schedule I—(cont'd.)

Name of Company	Place of Manufacture	Brand Name
Goodyear Tire & Rubber Company	Unknown	Batteries (cont'd.)
		Goodyear YKL
		Resolute
		Radiator Seal
		Rubber Dressing
Warner-Patterson Company	Chicago, Illinois	Warner's Liquid Solder
		Warner's Radiator Protector, Cleaner and Service Cleaner
Rust Master Chemical Co.	Boston, Mass.	Rust Master
		Leak Master
Purolator Products, Inc.	Newark, New Jersey	Purolator Oil
	Rahway, New Jersey	Filters and Oil Lines
A. Schrader's Son	Brooklyn, New York	Schrader Valve Hardware
Dill Mfg. Company	Cleveland, Ohio	Dill Standard Tire Valves and Valve Parts
Stant Mfg. Company	Connersville, Ind.	Stant Caps & Mirrors
Shur Gloss Mfg. Co.	Chicago, Illinois	Shur Wonder Wash (Car Wash)
Armstrong Engineering Corp.	Los Angeles, Calif.	Victor Tire Life Patches
[fol. 734]		
Shields-Harper (Mfg. Rep.)	Memphis, Tenn.	Lube Equipment, etc.
	Toledo, Ohio	Rotary
	Cincinnati, Ohio	DeVilbiss
	Minneapolis, Minn.	Belcrank
		Franklin Transformers
Solar Corporation	Milwaukee, Wis.	Richlite Batteries
Las-Stik Mfg. Company	Hamilton, Ohio	Las-Stik Polishing Cloths and tire repair materials
Monarch Governor Co.	Detroit, Michigan	Monarch Mirrors
Anderson Company	Gary, Indiana	Anco (Windshield wipers and Replacement Motors)
Lisle Corporation	Clarinda, Iowa	Lisle Magnetic Drain Plugs
Allube Corporation	Glendale, Calif.	Allube Brake Fluid and Chemical Products
Service Sales Co.	Dallas, Texas	Diametric Rapidrane
Tung-Sol Lamp Works, Inc.	Los Angeles, Calif.	Tung-Sol Miniature Lamps and Seal Beam Units
E. I. duPont de Nemours and Company	Wilmington, Delaware	Dupont Polishes & Chemicals
Southern Supply Co.	Pasadena, Calif.	Chem-Cream & Gun
Monroe Auto Equipment Co.	Monroe, Michigan	Monroe Shock Absorbers
Littlefuse, Inc.	Chicago, Illinois	Littlefuse Car Fuses
Defiance Mfg. Co.	Hollywood, Calif.	Defiance Keyless Locking Gas Caps
Dapco, Inc.	Chicago, Ill.	Dapco Auto Seat Covers
Ethyl Specialties Corp.	New York	Ethyl Cleaner
Blake Moffitt & Towne	Unknown	Driwell Towels
		Harcraft Roll Towels
		Conseco Toilet Seat Covers
		Proco Toilet Seat Covers
		Boraxo
		Luron
		Castilian Toilet Tissue
Resistoflex Corp.	Belleville, New Jersey	Resistoflex Gas & Oil Lines
Gray Co.	Minneapolis, Minn.	Graco Lubricating Equipment
Protecto Products, Inc.	Pomona, Calif.	"Economy" Toilet Seat Covers

[fol. 735]

Schedule I—(cont'd.)

Name of Company	Place of Manufacture	Brand Name
Aves Electric Co.	Beverly Hills, Calif.	Curb-L-Arms Curb Whiskers
Gross Mfg. Co.	Monrovia, Calif.	Gross Tire & Tube Repair Materials and Water Bags
Drake Equipment & Sales Co.	Los Angeles, Calif.	Fillcoolator
Lincoln Engineering Co.	St. Louis, Mo. and Los Angeles, Calif.	Lincoln Lubricating Equipment
E-Z Fill Radiator Cap Co.	Venice, Calif.	E-Z Fill Radiator Caps
Peters & Russel, Inc.	Springfield, Ohio	Lo Par Exhaust Deflectors
Yankee Metal Products Co.	Norwalk, Conn.	Yankee Automotive Safety Devices
Guaranteed Parts Co., Inc.	Seneca Falls, N. Y.	Guaranteed Ignition Service Parts
Sandee Mfg. Co.	Chicago, Ill.	Feather-Lite Garden Hose
H. Wenzel Tent & Duck Co.	St. Louis, Mo.	Water Boy Water Bags
S & M Lamp Co.	Los Angeles, Calif.	S & M Auto Lamps
Metalizing Company of America	Los Angeles, Calif.	Moguloid Block Sealer
Airtex Automotive Division of Chefford Master Mfg. Co.	Fairfield, Illinois	Airtex Fuel Pumps
Wilco Co.	Los Angeles, Calif.	Wilco & Cleares Windshield Cleaners
Fox Products Co.	Philadelphia, Pa.	Fox Battery Chargers
Conners, Inc.	Los Angeles, Calif.	Conners Seat Covers Fitrite Seat Covers
National Carbon Division of Union Carbide & Carbon Corp.	Unknown	Eveready Miniature Lamps & Seal Beam Units Eveready Flashlights & Batteries
	Texas City, Texas	Prestone & Trek Anti-freeze

[fol. 736]

R. M. Hollingshead Corp.	Camden, New Jersey	Whiz Products
L & M Sales Corp.	Downey, Calif.	Shamrock Seat Covers Auto Craft Seat Covers
Ray Cooper	Alhambra, Calif.	Silver Trumpet Tail Pipe Extensions
Wagner Electric Company	St. Louis, Mo.	Wagner-Lockheed Brake Fluid
C. J. Hendry Co.	San Diego and San Francisco, Calif.	Henco Trouble Light
Mid-Western Auto Parts	Kokomo, Indiana and Whittier, Calif.	Snugl Wheel Balance Weights
Kaydon Mfg. Co.	Santa Monica, Calif.	Tru-Bal Wheel Balancers
Choldun Mfg. Co.	New Haven, Conn.	Choldun Oil Changers
American Grease Stick Co.	Muskegon, Michigan	Ru Glyde & other specialized lubricants
Cadie Chemical Products, Inc.	New York, N. Y.	Cadie Polishing Cloths
Buddy Seat Cover Co.	Los Angeles, Calif.	Buddy Seat Covers
L. M. W. Corp.	San Gabriel, Calif.	Penguin Car Coolers
Grover Products Co.	Los Angeles, Calif.	Grover Air Horns
Acme Rubber Products Co.	Trenton, New Jersey	Acme Automotive Hose Acme Garden Hose
Burd Piston Ring Co.	Rockford, Ill.	Hadees Automotive Hot Water Heaters
Campbell Chain Co.	York, Pennsylvania	Sno-King Tire Chains
Sunware Products, Inc.	New York, N. Y.	Sunware Sun Glasses
Better Monkey Grip Co.	Dallas, Texas	Monkey Grip Tire & Tube Repair Materials

Schedule I—(cont'd.)

Name of Company	Place of Manufacture	Brand Name
Sparton Automotive Division of Sparks-Whithington Co.	Jackson, Mich.	Sparton Automotive Safety Equipment
O-Cel-O, Inc.	Buffalo, New York	O-Cel-O Cellulose Sponges
E. Edelmann & Co.	Chicago, Ill.	Edelmann Oil & Gas Lines
McColpin-Christie Corp.	Los Angeles, Calif.	C & C QX Chargalyzer
[fol. 737]		
Wells Mfg. Co.	Fond du Lac, Wisc.	Wells Ignition Service Parts
Nassau Sponge Co.	Chicago, Ill.	Clix Chamois
Acme Air Appliance Co.	Brooklyn, New York	Acme Air Appliances (Valve Hardware)
Auto Specialties Mfg. Co.	St. Joseph, Michigan	Ausco Jacks
Bergman Tool Mfg. Co.	Buffalo, New York	Blue Bird Tools
Chrisholm Industries	Lynn, Mass.	C & B Fast Oil Changer
Associated Equipment Corp.	St. Louis, Mo.	Hartman Battery Chargers
The Valentine Co.	Seattle, Washington	Valco Car Wash
Duro Metal Products Co.	Chicago, Ill.	Duro Automatic Transmission Tools
Lyons Products Co.	Los Angeles, Calif.	Flying Rocket Tail Pipe Extensions
Industrial Machine & Tool Co.	Des Moines, Iowa	Presto Tire Chains
Del N. Larson Co.	San Francisco	Plastic Windshield Cleaner Containers
International Battery Co.	Unknown	Richlite Batteries
Petroleum Products Corp.	Unknown	Silco & Lucite Motor Oil Additives

[fol. 738] Subpoena Duces Tecum

Paragraph No. 11

The original records, or a compilation prepared therefrom, showing the total dollar volume of (1) tires and tubes, (2) batteries, and/or (3) other automotive accessories, separately stated, purchased by Richfield annually from 1938 to 1950, inclusive, from any manufacturer, producer, distributor, or seller, for resale, consignment, or distribution, to retail service station outlets handling or selling Richfield petroleum products, or to TBA distributors who supply said service station outlets.

For response thereto defendant submits a compilation as follows:

Year	(1) Tires and Tubes	(2) Batteries	(3) Other Automotive Accessories
1938	$ 126,070.22	$ 598.55	$ —
1939	178,668.03	12,685.49	—
1940	276,570.64	42,799.02	—
1941	422,875.28	92,979.55	—
1942	58,526.02	76,068.69	—
1943	237,180.69	234,327.82	—
1944	550,433.98	481,243.92	109,087.37
1945	1,107,581.65	356,279.63	328,038.72
1946	1,576,829.81	411,684.00	561,487.06
1947	1,877,936.65	619,074.18	484,038.20
1948	1,860,937.74	548,918.23	604,712.51
1949	2,095,582.12	495,987.24	789,802.06
1950	2,646,400.07	482,040.37	956,412.96

Note: Except in a few instances (involving less than 3 per cent of the total volume of tires, tubes, batteries, and other automotive accessories sold), Richfield has not sold tires, tubes, batteries, or other automotive accessories directly to the operators or dealers of service stations, with whom Richfield has written agreements of the type represented by Government Exhibits 1, 1a to 1g, inclusive; 2; 3, [fol. 739] 3a to 3d, inclusive; 4, 4a to 4d, inclusive; 5, 5a to 5i, inclusive.

Also, TBA distributors do not sell their entire purchases of tires, tubes, batteries, or other automotive accessories to retail service station outlets handling or selling Richfield petroleum products. TBA distributors have advised Richfield that in their opinion in excess of 30 per cent of their sales of tires, tubes, batteries, or other automotive accessories are made to service stations not handling Richfield petroleum products.

[fol. 740] Subpoena Duces Tecum

Paragraph No. 12

The original records, or a compilation prepared therefrom, showing for each of the years 1938 to 1950, inclusive, the total annual dollar volume of automotive accessories purchased by Richfield for resale or distribution to retail service station outlets handling or selling Richfield pe-

troleum products, or to TBA distributors supplying said outlets, from each manufacturer, producer, distributor, or dealer selling in excess of $3,000 of said automotive accessories during the period from January 1, 1938 to December 31, 1950, such compilation to include the name of said manufacturer, producer, distributor, or dealer, the items of automotive accessories purchased, the total annual dollar volume of purchases from each, the place or places of manufacture of each, and the point of shipment to Richfield or to others for its account, of said accessories purchased from said manufacturers or producers.

For response thereto defendant submits a compilation as follows:

See Schedules numbers I thru XLII attached.

[fol. 741] Paragraph No. 12

Schedule No. I

Supplier: Acme Rubber Company
Address: Trenton, New Jersey
Accessories: Automotive Hose

Dollar Volume:

1950 $6,264.28

[fol. 742] Paragraph No. 12

Schedule No. II

Supplier: Airtex Automotive Division
Cheffor Master Mfg. Co.
Address: Fairfield, Ill.
Accessories: Fuel Pumps

Dollar Volume:

1950 $4,670.16

[fol. 743] Paragraph No. 12

Schedule No. III

Supplier: Allube Corporation
Address: 928 Allen Ave., Glendale, California
Accessories: Brake Fluid, Auto Soap and Hand Cleaner

Dollar Volume:

1946	$ 447.73
1947	4,385.31
1948	12,919.63
1949	9,254.29
1950	4,308.17

[fol. 744] Paragraph No. 12

Schedule No. IV

Supplier: The Anderson Company
Address: Gary, Indiana
Accessories: Wiper Arms and Blades

Dollar Volume:

1946	$25,255.82
1947	14,204.53
1948	19,893.03
1949	26,553.94
1950	34,306.88

[fol. 745] Paragraph No. 12

Schedule No. V

Supplier: Auto Craft Company
Address: 8267 E. Phlox, Downey, Calif.
Accessories: Seat Covers

Dollar Volume:

1949	$3,573.31
1950	-------

[fol. 746] Paragraph No. 12

Schedule No. VI

Supplier: Brake Equipment Sales Co.
Address: 1527 W. Manchester Blvd., Los Angeles, California
Accessories: Wheel Balance Weights and Shims

Dollar Volume:

1947	$1,336.58
1948	4,391.63
1949	------
1950	------

[fol. 747] Paragraph No. 12

Schedule No. VII

Supplier: Campbell Chain Company
Address: York, Pa.
Accessories: Auto Chains

Dollar Volume:

1950	$35,581.36

[fol. 748] Paragraph No. 12

Schedule No. VIII

Supplier: Champion Spark Plug Co.
Address: Toledo, Ohio.
Accessories: Spark Plugs

Dollar Volume:

1944	$ 58,244.46
1945	167,294.50
1946	211,216.05
1947	182,783.58
1948	151,565.28
1949	223,703.06
1950	208,870.50

[fol. 749] Paragraph No. 12

Schedule No. IX

Supplier:
Address:
Accessories:

Dollar Volume:

(This schedule not used.)

[fol. 750] Paragraph No. 12

Schedule No. X

Supplier: Dapco, Inc.
Address: 705 Washington Blvd., Chicago, Illinois
Accessories: Seat Covers

Dollar Volume:

1947	$8,788.80
1948	929.89
1949	------
1950	------

[fol. 751] Paragraph No. 12

Schedule No. XI

Supplier: E. I. duPont de Nemours & Co.
Address: 235 Second St., San Francisco, California
Accessories: No. 7 Line—Principally Radiator Compounds

Dollar Volume:

1946	$ 3,953.24
1947	10,057.95
1948	7,840.98
1949	3,354.55
1950	------

[fol. 752] Paragraph No. 12

Schedule No. XII

Supplier: E. & L. Distributing Co.
Address: 1978 So. Los Angeles St., Los Angeles, Calif.
Accessories: Air Conditioners

Dollar Volume:

1946	$2,267.75
1947	820.91
1948	72.80
1949	------
1950	------

[fol. 753] Paragraph No. 12

Schedule No. XIII

Supplier: Defiance Mfg. Co.
Address: 430 Markham Bldg., Hollywood, Calif.
Accessories: Gasoline Tank Caps

Dollar Volume:

1947	$2,266.13
1948	1,368.51
1949	------
1950	------

[fol. 754] Paragraph No. 12

Schedule No. XIV

Supplier: Ethyl Specialties Corp.
Address: 21 West St., New York, N. Y.
Accessories: Ethyl Cleaner

Dollar Volume:

1947	$5,097.63
1948	144.00
1949	------
1950	------

[fol. 755] **Paragraph No. 12**

Schedule No. XV

Supplier: General Tire & Rubber Co.
Address: 1100 South Santa Fe Ave., Los Angeles, Calif.
San Francisco, California—Portland, Oregon.
Accessories: Tires and Tubes

Dollar Volume:

1938	$126,070.22
1939	37,749.05
1940	------
1941	------
1942	------
1943	------
1944	------
1945	------
1946	------
1947	------
1948	------
1949	------
1950	------

[fol. 756] Paragraph No. 12

Schedule No. XVI

Supplier: Goodyear Tire & Rubber Co.
Address: 6701 So. Central Ave., Los Angeles, Calif.
San Francisco, California—Sacramento, Calif.
Phoenix, Ariz.—Portland, Oregon
Spokane, Washington—Seattle, Washington
Accessories: Tires, Tubes, Batteries, and Schrader & Dill Air Valves and Gauges

Dollar Volume:

1939	$ 235,876.13
1940	247,503.35
1941	381,716.02
1942	90,175.15
1943	397,728.46
1944	977,141.88
1945	1,339,910.18
1946	1,840,522.59
1947	2,450,961.77
1948	2,631,441.94
1949	2,802,788.70
1950	3,323,948.21

[fol. 757] Paragraph No. 12

Schedule No. XVII

Supplier: Gross Mfg. Co.
Address: P. O. Box 59, Monrovia, Calif.
Accessories: Tire & Tube Repair Material

Dollar Volume:

1947	$ 2,092.47
1948	14,291.62
1949	17,224.56
1950	18,459.33

[fol. 758] Paragraph No. 12

Schedule No. XVIII

Supplier: Guaranteed Parts Co., Inc.
Address: Seneca Falls, N. Y.—Los Angeles, Calif.
San Francisco, Calif.—Seattle, Wash.
Accessories: Ignition Parts

Dollar Volume:

1948	$13,999.36
1949	10,048.16
1950	10,394,66

[fol. 759] Paragraph No. 12

Schedule No. XIX

Supplier: R. M. Hollingshead Corp.
Address: Camden, N. J.
Accessories: Brake Fluid, "Whiz" Products.

Dollar Volume:

1949	$ 4,399.80
1950	10,307.07

[fol. 760] Paragraph No. 12

Schedule No. XX

Supplier: International Battery Co.
Address: 626 W. 15th St., Los Angeles, Calif.
Accessories: Batteries

Dollar Volume:

1947	$ 473.82
1948	28,377.81
1949	------
1950	------

[fol. 761] Paragraph No. 12

Schedule No. XXI

Suppplier:
Address:
Accessories:

Dollar Volume:

(This schedule not used.)

[fol. 762] Paragraph No. 12

Schedule No. XXII

Supplier: Lainide Corp.
Address: 7601 Melrose Ave., Los Angeles, Calif.
Accessories: Battery Cables

Dollar Volume:

1943	$3,616.00
1944	.....
1945	.....
1946	.....
1947	.....
1948	.....
1949	.....
1950	.....

[fol. 763] Paragraph No. 12

Schedule No. XXIII

Supplier: The Las-Stik Mfg. Co.
Address: 157 N. "B" St., Hamilton, Ohio
Accessories: Tire Repair & Polishing Supplies

Dollar Volume:

1946	$ 3,554.58
1947	3,604.49
1948	3,230.26
1949	3,290.70
1950	4,127.53

[fol. 764] Paragraph No. 12

Schedule No. XXIV

Supplier: Lisle Corp.
Address: Clarinda, Iowa
Accessories: Magnetic Plugs

Dollar Volume:

1946	$7,555.71
1947	1,215.26
1948	63.15
1949	------
1950	------

[fol. 765] Paragraph No. 12

Schedule No. XXV

Supplier: Little Fuse, Inc.
Address: 4757 Ravenswood Ave., Chicago, Ill.
Accessories: Fuses & Parts

Dollar Volume:

1947	$3,263.66
1948	2,782.14
1949	------
1950	------

[fol. 766] Paragraph No. 12

Schedule No. XXVI

Supplier: Mac's Super Gloss
Address: P. O. Box 98, Los Angeles 42, Calif.
Accessories: Polish

Dollar Volume:

1944	$10,193.75
1945	25,317.54
1946	32,600.89
1947	15,558.38
1948	30,726.85
1949	41,445.38
1950	59,582.06

[fol. 767] Paragraph No. 12

Schedule No. XXVII

Supplier: Monarch Governor Co.
Address: 1832 Bethune Ave., Detroit, Michigan
Accessories: Rearview Mirrors

Dollar Volume:

1946	$9,712.90
1947	8,543.23
1948	557.17
1949	———
1950	———

[fol. 768] Paragraph No. 12

Schedule No. XXVIII

Supplier: National Carbon Co.
Address: 22 Battery St., San Francisco, Calif.
Accessories: Auto Lamps—Anti-Freeze.

Dollar Volume:

1949	$ 60,243.89
1950	228,436.99

[fol. 769] Paragraph No. 12

Schedule No. XXIX

Supplier: O-Cel-O Corp.
Address: 1200 Niagara St., Buffalo 13, N. Y.
Accessories: Sponges

Dollar Volume:

1949	$4,203.46
1950	———

[fol. 770] Paragraph No. 12

Schedule No. XXX

Supplier: Petroleum Solvents Corp.
Address: 331 Madison Ave., New York, N. Y.
Accessories: Radiator Chemicals

Dollar Volume:

1949	$3,175.98
1950	-------

[fol. 771] Paragraph No. 12

Schedule No. XXXI

Supplier: Purolator Products, Inc.
Address: Empire St., Newark, New Jersey
Accessories: Oil Filters and Parts

Dollar Volume:

1944	$ 6,230.99
1945	24,422.83
1946	56,071.85
1947	45,965.63
1948	45,209.23
1949	60,224.43
1950	79,197.73

[fol. 772] Paragraph No. 12

Schedule No. XXXII

Supplier: Ralphs-Pugh Co.
Address: 530 Howard St., San Francisco, Calif.
Accessories: Garden Hose

Dollar Volume:

1950	$6,256.47

[fol. 773] Paragraph No. 12

Schedule No. XXXIII

Supplier: Rust Master Chemical Co.
Address: 712 Beacon St., Boston, Mass.
Accessories: Radiator Compounds

Dollar Volume:

1944	$ 3,166.98
1945	9,896.03
1946	11,822.18
1947	4,024.54
1948	2,213.45
1949	-------
1950	-------

[fol. 774] Paragraph No. 12

Schedule No. XXXIV

Supplier: Sandee Mfg. Co.
Address: 5050 Foster Ave., Chicago, Ill.
Accessories: Plastic Hose

Dollar Volume:

1948	$10,216.93
1949	7,207.35
1950	-------

[fol. 775] Paragraph No. 12

Schedule No. XXXV

Supplier: Shur Gloss Mfg. Co.
Address: 3555 W. Grand Ave., Chicago, Ill.
Accessories: Washing Compound

Dollar Volume:

1944	$ 1,162.59
1945	4,137.19
1946	12,935.95
1947	7,603.84
1948	6,872.17
1949	8,506.98
1950	11,475.33

[fol. 776] Paragraph No. 12

Schedule No. XXXVI

Supplier: Solar Corporation
Address: 944 Bruce St., Milwaukee, Wis.
Accessories: Batteries

Dollar Volume:

1946	$15,091.02
1947	8,088.36
1948	-------
1949	-------
1950	-------

[fol. 777] Paragraph No. 12

Schedule No. XXXVII

Supplier: Stant Mfg. Co.
Address: Connersville, Indiana
Accessories: Gasoline Tank Caps

Dollar Volume:

1944	$ 1,072.84
1945	17,114.47
1946	14,122.56
1947	12,124.38
1948	5,958.46
1949	12,473.97
1950	5,642.86

[fol. 778] Paragraph No. 12

Schedule No. XXXVIII

Supplier: Tung-Sol Lamp Works, Inc.
Address: 1816 So. Flower St., Los Angeles, Calif.
Accessories: Lighting Equipment

Dollar Volume:

1946	$ 1,657.02
1947	9,148.65
1948	12,925.70
1949	8,954.40
1950	3,528.48

[fol. 779] Paragraph No. 12

Schedule No. XXXIX

Supplier: Wagner Electric Corp.
Address: 6400 Plymouth Ave., St. Louis 14, Mo.
Accessories: Brake Fluid

Dollar Volume:

1950	$11,007.86

[fol. 780] Paragraph No. 12

Schedule No. XL

Supplier: Warner-Patterson Co.
Address: 920 So. Michigan Ave., Chicago, Ill.
Los Angeles, Calif.
Accessories: Radiator Compounds

Dollar Volume:

1944	$ 3,007.03
1945	8,464.69
1946	19,671.95
1947	10,525.75
1948	13,396.12
1949	15,257.54
1950	9,053.31

[fol. 781] Paragraph No. 12

Schedule No. XLI

Supplier: Wenzel Tent & Duck Co.
Address: 1035 St. Paul St., St. Louis, Mo.
Accessories: Water Bags

Dollar Volume:

1948	$3,034.35
1949	------
1950	------

[fol. 782] Paragraph No. 12

Schedule No. XLII

Supplier: Willard Battery Company
Address: P. O. Box 6850 E. L. A. Branch, Los Angeles, Calif.
Accessories: Batteries

Dollar Volume:

1944	$53,293.79
1945	60,113.75
1946	74,422.98
1947	59,454.89
1948	18,017.93
1949	6,964.13
1950	6,400.08

[fol. 783] Subpoena Duces Tecum

Paragraph No. 13

The original records, or a compilation prepared therefrom, showing the total annual dollar volume, by states, of (1) tires and tubes, (2) batteries, and (3) other automotive accessories, sold by Richfield from 1938 to and including the year 1950, to retail service station outlets handling or selling Richfield petroleum products under any of the forms of agreements reported in response to paragraph 1 above, such compilation to include the name and address of each service station to whom such sales have been made for each year 1944 to 1950, inclusive.

For response thereto defendant submits a compilation as follows:

Schedule No. I Annual Dollar Volume
Schedule No. II Dealer Names and Addresses

The compilations submitted in Schedules I and II show the sales made by defendant to retail service station outlets handling or selling Richfield petroleum products under any of the forms of agreement of the type represented by Government Exhibits 1, 1a to g, inclusive; Government Exhibit

2; Government Exhibits 3, 3a to d, inclusive; Government Exhibits 4, 4a to d, inclusive; and Government Exhibits 5, 5a to i, inclusive.

[fol. 784]

Paragraph No. 13

Schedule No. I

Year	(1) Tires and Tubes	(2) Batteries	(3) Other Accessories
1938	$183,310.00	$ —	—
1939	208,825.00	37,855.00	—
1940	247,752.00	54,546.00	—
1941	419,356.00	85,187.00	—
1942	57,453.00	66,961.00	—
1943	310,033.00	198,737.00	—
1944	47,351.00	24,026.00	—
1945	38,477.00	7,792.00	—
1946	53,261.00	8,340.00	—
1947	63,780.00	11,828.00	—
1948	67,201.00	13,250.00	—
1949	124,142.58	16,414.73	—
1950	167,946.41	17,323.36	—

Note: Defendant does not maintain records reflecting this information by states.

[fol. 785]

Paragraph No. 13

Schedule No. II

Name	Address	City and State
M. K. Wadley	2390 Pacific Hiway	Medford, Oregon
A. C. Payne	2198-6th Street West	Eugene, Oregon
Ted Kelt	411 South 6th Street	Grants Pass, Oregon
Kenneth Kohl	1406 1st Avenue South	Seattle, Washington
Ed. S. Melsom	2100 Airport Way	Seattle, Washington
E. V. Olsen	University, Alaskan and Western	Seattle, Washington
James W. Heaslet	607 Lake Street	Colfax, Washington
Enoch E. Smith	516 North Maine Street	Colfax, Washington
R. I. Mitchell R. L. Mitchell	at Malaga	Fresno, California
C. A. Stoffer	8255 San Leandro Street	Oakland, California
Johnson, Brake & Johnson	P. O. Box 1037	Redding, California
Roderick B. Cave	P. O. Box 888	Salinas, California
F. Robert Lasley	Bayshore Hiway & Alviso Road	Sunnyvale, California
Willits Motor Co.	Main and State Streets	Willits, California
Jack's Tire Service	2002 East Florence	Bell Gardens, California
Geo. Ricca	1st & Beale Streets	Kingman, Arizona
B. F. Massey	401 North Rodeo Drive	Beverly Hills, Calif.
Cline Motor Co.	201 South Montezuma	Prescott, Arizona
Clarence Shaw		Salome, Arizona
Capitol Tire & Battery Co.	1901 West Jefferson	Los Angeles, California
Harry Viner	3600 Avalon Boulevard	Los Angeles, California
Donald De Silva	5th & Madison Streets	Phoenix, Arizona
Jesse V. Sullivan	Hobson & Carlton	Blythe, California

[fol. 786]

Home Tire & Auto Supply	4176 Market Street	Riverside, California
Horace E. Holbrook	322 North Imperial	Imperial, California
Bonner-Stromer	8500 Van Nuys Boulevard	Van Nuys, California
Lambertucci Bros.		Tonopah, Nevada
Snyder-Lynche	711 S. San Fernando Road	Burbank, California
Elwin Fain	Court & Grande Streets	Nogales, Arizona
Truck & Motor Fuel Dist.	101 S. Paramount Boulevard	Paramount, California (Hynes)
E. H. Wulfers	5th & Madison	Phoenix, Arizona
Jesse Cuppari	1101 West 1st Street	Los Angeles, California
O. M. Clark	U. S. Hiway 99 South	Redding, California
Hampton-Adams	2390 Pacific Hiway	Medford, Oregon
Geo. Miller	2100 Airport Way	Seattle, Washington
D. O. Holleyman	8255 San Leandro	Oakland, California

Note: Defendant's records are sufficient to provide dealers names and addresses only for the years 1949 and 1950.

[fol. 787] Subpoena Duces Tecum

Paragraph No. 14

The original records, or a compilation prepared therefrom, showing the total annual dollar volume of (1) tires and tubes, (2) batteries, and (3) other automotive accessories sold by Richfield from 1938 to 1950, inclusive, to Richfield TBA distributors who distribute and sell such products to retail service station outlets handling or selling Richfield petroleum products.

For response thereto defendant submits a compilation as follows:

Year	(1) Tires and Tubes	(2) Batteries	(3) Other Accessories
1938	$ —	$ —	$ —
1939	—	—	—
1940	—	—	—
1941	—	—	—
1942	—	—	—
1943	—	—	—
1944	822,067.31	392,177.19	5,236.88
1945	1,282,575.53	389,630.11	219,919.76
1946	1,775,375.43	417,015.34	703,166.46
1947	2,126,028.83	591,416.01	702,556.16
1948	2,029,919.97	660,295.81	670,302.22
1949	2,154,965.17	572,874.79	877,066.43
1950	2,675,135.74	554,778.74	1,048,209.06

Note: Richfield TBA distributors do not sell their entire purchases from Richfield of tires, tubes, batteries, or other automotive accessories to retail service station outlets handling or selling Richfield petroleum products. TBA distributors have advised Richfield that in their opinion in excess of 30 per cent of their sales of tires, tubes, batteries, or other accessories are made to service stations not handling Richfield petroleum products.

[fol. 788] Subpoena Duces Tecum

Paragraph No. 15

The original records, or a compilation prepared therefrom, showing for each year 1938 to 1950, inclusive, the total dollar volume of sales of automotive accessories by Goodyear Tire and Rubber Company, Inc., or any other.

manufacturer, distributor, or seller to TBA distributors on which Richfield received any commission or other remuneration, such compilation to include the total annual amount of commission or remuneration received by Richfield from said seller or sellers on said sales.

For response thereto defendant submits a compilation as follows:

Year	Volume of of Sales	Annual Amount of Commission
1938	$295,672.16	$23,864.68
1939	290,038.66	23,110.71
1940	112,209.56	9,926.38
1941	95,549.46	9,519.05
1942	71,669.00	7,166.90
1943	87,105.50	8,710.55
1944	153,227.17	14,301.33
1945	361,967.00	32,484.88
1946	600,029.70	56,185.84
1947	449,159.26	44,069.77
1948	426,812.30	42,681.23
1949	362,961.50	36,296.15
1950	423,047.60	42,304.76

[fol. 789] Subpoena Duces Tecum

Paragraph No. 16

The original records, or a compilation prepared therefrom, showing the gross profit of Richfield, by years, from 1944 to 1950, inclusive, on sales by Richfield of automotive accessories to retail service station outlets and/or Richfield TBA distributors.

For response thereto defendant submits a compilation as follows:

Years	Gross Profit
1944	$200,364.94
1945	296,019.28
1946	415,189.48
1947	495,136.86
1948	517,290.69
1949	529,161.34
1950	653,052.98

[fol. 790] Subpoena Duces Tecum

Paragraph No. 17

The original records, or a compilation prepared therefrom, showing the total annual dollar volume, for each of the years 1944 to and including the year 1950, of automotive accessories purchased (1) by TBA distributors from Richfield, or (2) from others on which Richfield received any commission or remuneration, which were sold by said TBA distributors to retail service station operators at service station outlets handling or selling Richfield petroleum products.

For response thereto defendant submits a compilation as follows:

	(1)	(2)	(3)
1944	$1,219,481.38	$153,227.17	$960,895.99
1945	1,892,125.40	361,967.00	1,577,864.68
1946	2,895,557.23	600,029.70	2,446,910.85
1947	3,420,001.00	449,159.26	2,708,412.18
1948	3,360,518.00	426,812.30	2,651,131.21
1949	3,604,906.39	362,961.50	2,777,507.52
1950	4,278,123.54	423,047.60	3,290,819.80

Note: Defendant does not maintain records nor are records available to defendant which disclose the breakdown between the automotive accessories sold by TBA distributors to (a) L. O. Stations, Dealer 3-C Stations, and Dealer Stations, and (b) service stations not handling Richfield petroleum products. The TBA distributors have advised Richfield that in their opinion in excess of 30 per cent of accessories sold by TBA distributors are sold to service stations not handling Richfield petroleum products. Column (1) above represents automotive accessories purchased by TBA distributors from Richfield; column (2) represents the total dollar volume of automotive accessories with respect to which Richfield receives commissions; column (3) represents 70 per cent (100% less 30%) of the total of columns (1) and (2).

[fol. 791] **Subpoena Duces Tecum**

Paragraph No. 20

The original records, or a compilation prepared therefrom, showing the names and business addresses of all TBA distributors to which Richfield, as of the date of the service of this subpoena, sells automotive accessories selected by it for distribution and sale to retail service station operators handling or selling Richfield petroleum products.

For response thereto defendant submits a compilation as follows:

See Schedule I attached.

[fol. 792]

Paragraph No. 20

Schedule I

Name of Account	Address	City and State
F. L. Davies	P. O. Box 325	Albany, Oregon
D. C. Hall and H. L. Johnson	568 Pond St.	Astoria, Oregon
G. G. Richardson	U. P. R. R. & H Street	Baker, Oregon
T. M. Harmer	Squalicum Fill	Bellingham, Washington
Don Denning	E. First & Hawthorne	Bend, Oregon
H. L. Purcell	1400 N. Orchard	Boise, Idaho
G. C. Summers	Thompson & Marguite Sts.	Bremerton, Washington
J. L. Lawrence	West Aven St.	Caldwell, Idaho
V. E. McCluskey	700 S. Tower	Centralia, Washington
D. L. Lovitt	E. Garden Ave. & S. I. RR	Coeur D'Alene, Idaho
H. M. Peterson	"A" Street & RR	Colville, Washington
M. E. Cooney	NW of Condon on Oregon Hiway 205	Condon, Oregon
M. W. Harn	County Road 434 & SP RR	Corvallis, Oregon
L. Lasater	30th & Main	Cottage Grove, Oregon
R. E. Cathcart	Sixth St. & NP RR	Davenport, Washington
S. W. Schirmer	West Main	Dayton, Washington
L. A. Martinen	West 5th & NP RR	Ellensburg, Washington
D. D. Denney	UP Tracks & Depot St.	Enterprise, Oregon
H. R. Craig	Ninth & Railroad	Ephrata, Washington
R. B. Eatherton	"F" St. & 10th	Grants Pass, Oregon
F. S. Hall	Middle St. & CP RR	Grangeville, Idaho
L. W. Green	NW Corner Bullrun St. and Hiway 50	Gresham, Oregon
O. E. Schwab	County Road 404	Hillsboro, Oregon
James Rich	13th & Industrial	Hood River, Oregon
K. N. Heckard	Port of Ilwaco Property Road	Ilwaco, Washington

[fol. 793]

R. F. Snyder	1133 Lake Street	Kirkland, Washington
T. J. O'Harra	2300-1/2 So. Sixth	Klamath Falls, Oregon
B. R. Hyde	Island City, Oregon	(LaGrande, Oregon)
P. J. Van Buskirk	State Hiway 5	LaGrande, Washington

Schedule I—(cont'd.)

Name of Account	Address	City and State
Shelby Baily	P. O. Box 829	Lakeview, Oregon
Floyd Cloninger	E. Lewiston & County Road	Lewiston, Idaho
H. E. Schmitt	Hiway 101	Lincoln Beach, Oregon
M. M. Wakefield	1347 Vandercook Way	Longview, Washington
H. P. Mahon	Lafayette Ave. & McDaniel Lane	McMinnville, Oregon
J. T. Rasmussen	Pacific Hiway—South of Medford	Medford, Oregon
F. W. Milliken and R. J. Servas	3075 Harrison St.	Milwaukie, Oregon
C. F. Lathen	924 S. Main St.	Moscow, Idaho
A. E. Aune	U. S. Hiway 101 and Bradshaw	Newport, Oregon
H. N. Graham	Sheridan & Connecticut	North Bend, Oregon
L. W. Kuest	First & Fifth Sts.	Odessa, Washington
D. K. Settle	U. S. 97 North of Okanogan	Okanogan, Washington
F. C. Blankinship	523-1/2 N. Oregon St.	Ontario, Oregon
K. R. Lester	125 S. 10th Ave.	Pasco, Washington
C. A. Moll	1600 S. W. Court	Pendleton, Oregon
E. R. Gehrke, Jr.	635 Marine Drive	Port Angeles, Washington
E. H. Nelson	State Hiway 3 at Harrison	Pullman, Washington
P. N. Mountcastle	545 Third St.	Raymond, Washington
C. C. Gillenwater	P. O. Box 606	Redmond, Oregon
F. A. Schaefer	Front & South "I" St.	Ritzville, Washington
K. H. Linder	Edembower & SP RR	Roseburg, Oregon

[fol. 794]

H. G. Lease	Columbia River Hiway	St. Helens, Oregon
Hubbard & Davis	521 Main	Sandpoint, Idaho
R. J. Kimbel	Olympia Hiway	Shelton, Washington
O. D. Snider	401 Pacific Hiway	Sumner, Washington
Jess Stiltner	6th St. & Hiway 40	Sunnyside, Washington
J. B. Crawford	River Road at Terminal Road	The Dalles, Oregon
F. W. Thomas	Foot of East Third	Tillamook, Oregon
H. E. Jesseph	13th & Sumach	Walla Walla, Washington
J. E. Miller	9th & Railroad	Wenatchee, Washington
W. S. Philipp	514 Broadway	Yakima, Washington
Geo. R. McCrimmon	1821 W. 6th St.	Aberdeen, Washington
F. M. Wolverton and E. A. Presley	Broadway at "B"	Burns, Oregon
Hulden Motors	Arlington	Arlington, Oregon
C. E. Beck Motor Co.	Cottage Grove	Cottage Grove, Oregon
Commercial Supply & Equipment Co.	1070 Lawrence St.	Eugene, Oregon
B. E. Hollander	2325 Broadway	Everett, Washington
Eldon Young		
Eldon Young's Richfield Service		Lakeview, Oregon
M. E. Lematta	P. O. Box 5	Otis Junction, Oregon (Lincoln Beach, Oregon)
Ordel Oil Company	121 N. Capitol Way	Olympia, Washington
E. Radke	1431 S. E. 37th	Portland, Oregon
A. W. Myers	P. O. Box 413	Renton, Washington
R. W. Hoy	461 N. Front St.	Salem, Oregon
J. A. Westlake & Son	1125-1/2 Westlake North	Seattle, Washington

[fol. 795]

Schedule I—(cont'd.)

Name of Account	Address	City and State
L. F. Hobson	N. 1007–11 Division St.	Spokane, Washington
Fleming & Larson	2502 S. Tacoma Way	Tacoma, Washington
E. O. Argabright	12th & Juniper (P. O. Box 231)	Alturas, California
J. C. Williams	Route 1, Box 50–J	Antioch, California
G. I. Redding	3rd & Clayton Road (P. O. Box 487)	Concord, California
J. C. Lancaster	P. O. Box 5	Blairsden, California
R. T. Harris	Cordelia Junction and Hiway 40	Cordelia, California
G. O. Muscato	P. O. Box 577	East Ely, Nevada
A. L. Lani	1st & Main Sts. (P. O. Box 628)	Elko, Nevada
E. J. Ashton	52 Ferguson St. (P. O. Box 671)	Fallon, Nevada
Cecil Roach	824 Franklin St.	Fort Bragg, California
L. C. Blaettler	U. S. 101 South of City Limits (Box T)	Gilroy, California
B. P. Robinson	307 Washington Ave.	Grass Valley, California
D. J. Calatro	North Hiway 33	Gustine, California
J. S. Ross	Route 2, Box 669	Hanford, California
R. H. Booker	9th Ave. (P. O. Box 554)	Jamestown, California
R. S. Smith	Railroad & Lynn Sts. (P. O. Box 25)	King City, California
I. O. Guinn	P. O. Box 727	Lakeport, California
W. J. Bonetti	1078 Fourth St.	Livermore, California
M. J. Kennedy	221 S. Cherokee Ave. (P. O. Box 347)	Lodi, California

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C. W. Fuss	So. Railroad Ave. (P. O. Box 537)	Lovelock, Nevada
L. C. Jirsa	16th & "T" Streets (P. O. Box 691)	Merced, California
J. A. Doane	P. O. Box 33 Gardnerville, Nevada	(Minden, Nevada)
E. H. Gossard	1609 9th St. (P. O. Box 845)	Modesto, California
H. T. Moss	P. O. Box 647	Monterey, California
J. V. Corbaley	6th & Pine Sts. (P. O. Box 475)	Paso Robles, California
J. H. Mahoney	P. O. Box 58	Petaluma, California
V. R. Welles	447 South "E" St. (P. O. Box 208)	Porterville, California
R. N. Martin	Veda & Willard Sts. (P. O. Box 182)	Redding, California
W. H. Kelly	Route 3, Box 746 (P. O. Box 285)	Reedley, California
R. A. Bennett	P. O. Box 1489	Salinas, California
G. E. Muttersbach	Canal Road (P. O. Box 548)	San Rafael, California
F. J. Devins	139 Encinal St. (P. O. Box 473)	Santa Cruz, California
P. P. Greuner	Frances & Cleveland (P. O. Box 744)	Santa Rosa, California
K. R. Doyle	1110 Gay St. (P. O. Box 237)	Susanville, California
W. H. Ogan	"J" & Bush Sts. (P. O. Box 1098)	Tulare, California

[fol. 797]

Schedule I—(cont'd.)

Name of Account	Address	City and State
L. C. Hughes	So. Front St. (P. O. Box 688)	Turlock, California
R. I. Buxton	Thomas Road (P. O. Box 388)	Ukiah, California
Merril H. Fisher	1130 S. Main St. (P. O. Box 1107)	Visalia, California
M. L. Amaral	Railroad Ave. & Salinas Road	Watsonville, California
J. F. Harris	P. O. Box 428	Weed, California
P. L. Bengochea	East Railroad St. (P. O. Box 306)	Winnemucca, Nevada
L. R. Landis	559 Bridge St. (P. O. Box 449)	Yuba City, California
H. M. Hill	596 East 7th St.	Chico, California
R. S. Schofield		
S&M Auto Supply	626 Broadway	Eureka, California
M. C. Jensen	517 North 1st St.	Fresno, California
H. L. Speed		
Speed's Automotive	1410 31st Ave.	Oakland, California
L. V. Lani	1118 "B" St. (P. O. Box 198)	Sparks, Nevada
A. E. Schoenwald		
Schoney's	2418 17th St.	Sacramento, California
G. M. Alee	706 E. Lindsay St.	Stockton, California
A. Massei		
Massei Auto Supply	5119 Mission St.	San Francisco, California
J. H. Nicholson	92 So. River St.	San Jose, California
George Fleetham	9th St. & Railroad Ave.	Douglas, Arizona
J. G. Langham	South Fifth St.	Globe, Arizona

[fol. 798]

Lyle E. Trimble	641 W. Main St.	Mesa, Arizona
John W. Higgins	800 Sixth Ave.	Safford, Arizona
M. W. Duncan	301 E. Railroad St.	Williams, Arizona
A. H. Shipkey	1406 W. Broadway	Anaheim, California
E. D. Clark	420 E. Main St.	Barstow, California
W. A. Dayvault	450 S. Spring St.	Blythe, California
L. C. Cox	4th & Cantaloupe Sts.	Coachella, California
H. J. Meek	4th & Quince	Escondido, California
W. L. Graves	610 Main St.	Las Vegas, Nevada
E. E. Glenn	501 S. Cleveland St.	Oceanside, California
John Vaughn	198 N. Hamilton	Pomona, California
A. W. Pitts	Fifth St. Rd.	Camarillo, California
R. G. Hopper	139 E. Lumber St.	Lancaster, California
L. J. Begg	335 N. "G" St.	Lompoc, California
A. F. Schwartz	12160 Truman St.	San Fernando, California
Elmer T. Schroeder	1202 S. Main St.	Lone Pine, California
A. A. Meyer	130 N. Salsipuedes	Santa Barbara, California
A. C. Young	401 E. Hermosa Ave.	Santa Maria, California
E. E. Truesdell	211 N. 12th St.	Santa Paula, California
E. P. Locey	233 Dubbers St.	Ventura, California
J. W. Hillebert	Hiway 260	Holbrook, Arizona
George Eicca	First and Beale Sts.	Kingman, Arizona
Lakewood Dist. Co.	3848 A Atlantic Ave.	Long Beach, California
Turner Bunnell	7427 S. Western Ave.	Los Angeles, California
Stearns Tire Co.	455 S. Fairfax Ave.	Los Angeles, California
M. T. Tietjen	1954 Naomi	Los Angeles, California
C. G. Doucette	3313 Fernwood Ave.	Lynwood, California
Jack Dunbar	2007 N. 16th St.	Phoenix, Arizona
M. J. Cervantes	1003 N. Penn Place	Tucson, Arizona

[fol. 799]

Schedule I—(cont'd.)

Name of Account	Address	City and State
I. V. Service St. Supply	27 E. 3rd St.	Calexico, California
Taylor & Oslund Auto Supply	425 Baseline St.	San Bernardino, California
Service Station Supply Co.	1059 University Ave.	San Diego, California
Don E. Shaffer	139 Traffic Way	Arroyo Grande, California
George Gordon	131 1st St.	Bakersfield, California
Snyder-Lynch	811 S. San Fernando Rd.	Burbank, California
Vern Nevitt	1263 S. Brand Blvd.	Glendale, California
Charles Cole	447 E. Walnut	Pasadena, California
John Webster	4576 Sepulveda Blvd.	Van Nuys, California
G. A. Powell	2545 E. 24th St.	Los Angeles, California
S. E. Rondon	2545 E. 24th St.	Los Angeles, California
J. T. Tye	2545 E. 24th St.	Los Angeles, California
Carter-Hunter Oil Co.	512 S. "L" St.	Imperial, California
Harold Parks	325 Roosevelt	Long Beach, California
Armour Oil Co.	3715 Estudillo St.	Los Angeles, California
H. H. McCuistion, d/b/a Peerless Lubricating Co.	11546 Hiway 101	Santa Ana, California
F. P. O'Reilly	Goleta, California	Goleta, California
Raymond Hahn, d/b/a McCormack Oil Co.	221 N. Ventura Ave.	Ventura, California
Van McWhirter	15015 Oxnard	Van Nuys, California
Pacific Coast Borax Co.	Death Valley Junction	Death Valley, California
T. B. Smith	1400 W. 8th St.	Long Beach, California
Orange Empire Oil Co.	157 N. Towne Ave.	Pomona, California
H. C. Reinert	8118 San Fernando Rd.	Sun Valley, California
Fred C. Clark	310 Sunland	Bishop, California

[fol. 800] Subpoena Duces Tecum

Paragraph No. 21

The original records, or a compilation prepared therefrom, showing with respect to the TBA distributors listed in response to paragraph 20 above, the names of such of said distributors who are also acting as commission bulk plant operators under any commission agency agreement with Richfield, and the names of such of said distributors who are operating bulk plants as salaried employees of Richfield.

For response thereto defendant submits a compilation as follows:

See Schedule I attached.

Note: No salaried employees of Richfield are TBA distributors.

[fol. 801]

Paragraph No. 21

Schedule I

Name of Distributor	Address	City and State
F. L. Davies	P. O. Box 325	Albany, Oregon
D. C. Hall and H. L. Johnson	568 Pond Street	Astoria, Oregon
G. G. Richardson	UP RR & H Street	Baker, Oregon
T. M. Harmer	Squalicum Fill	Bellingham, Washington
Don Denning	E. First & Hawthorne	Bend, Oregon
H. L. Purcell	1400 N. Orchard	Boise, Idaho
G. C. Summers	Thompson & Marguerite Sts.	Bremerton, Washington
J. L. Lawrence	West Aven Street	Caldwell, Idaho
V. E. McCluskey	700 S. Tower	Centralia, Washington
D. L. Lovitt	E. Garden Ave. & SI RR	Coeur D'Alene, Idaho
H. M. Peterson	"A" Street & RR	Colville, Washington
M. E. Cooney	NW of Condon on Oregon Hiway 205	Condon, Oregon
M. W. Harn	County Road 434 & SP RR	Corvallis, Oregon
L. Lasater	30th & Main	Cottage Grove, Oregon
R. E. Cathcart	Sixth St. & NP RR	Davenport, Washington
S. W. Schirmer	West Main	Dayton, Washington
L. A. Martinen	West 5th & NP RR	Ellensburg, Washington
D. D. Denney	UP Tracks & Depot St.	Enterprise, Oregon
H. R. Craig	Ninth & Railroad	Ephrata, Washington
R. B. Eatherton	"F" St. & 10th	Grants Pass, Oregon
F. S. Hall	Middle St. & CP RR	Grangeville, Idaho
L. W. Green	NW Corner Bullrun Street & Hiway 50	Gresham, Oregon
O. E. Schwab	County Road 404	Hillsboro, Oregon
James Rich	13th & Industrial	Hood River, Oregon
K. N. Heckard	Port of Ilwaco, Property Rd.	Ilwaco, Washington

[fol. 802]

R. F. Snyder	1133 Lake Street	Kirkland, Washington
T. J. O'Harra	2300½ So. Sixth	Klamath Falls, Oregon
B. R. Hyde	Island City, Oregon	(LaGrande, Oregon)
P. J. Van Buskirk	State Hiway 5	LaGrande, Washington
Shelby Baily	P. O. Box 829	Lakeview, Oregon
Floyd Cloninger	E. Lewiston & County Road	Lewiston, Idaho
H. E. Schmitt	Hiway 101	Lincoln Beach, Oregon
M. M. Wakefield	1347 Vandercook Way	Longview, Washington
H. P. Mahon	Lafayette Ave. & McDaniel Lane	McMinnville, Oregon
J. T. Rasmussen	Pacific Hiway So. of Medford	Medford, Oregon
F. W. Milliken and R. J. Servas	3075 Harrison St.	Milwaukie, Oregon
C. F. Lathen	924 S. Main St.	Moscow, Idaho
A. E. Aune	U. S. Hiway 101 & Bradshaw	Newport, Oregon
H. N. Graham	Sheridan & Connecticut	North Bend, Oregon
L. W. Kuest	First & Fifth Sts.	Odessa, Washington
D. K. Settle	U. S. 97—No. of Okanogan	Okanogan, Washington
F. C. Blankinship	523½ N. Oregon St.	Ontario, Oregon
K. R. Lester	125 S. 10th Ave.	Pasco, Washington
C. A. Moll	1600 S. W. Court	Pendleton, Oregon
E. R. Gehrke, Jr.	635 Marine Dr.	Port Angeles, Washington
E. H. Nelson	State Hiway 3 at Harrison	Pullman, Washington
P. N. Mountcastle	545 Third St.	Raymond, Washington
C. C. Gillenwater	P. O. Box 696	Redmond, Oregon
F. A. Shaefer	Front & South "I" St.	Ritzville, Washington

Schedule I—(cont'd.)

Name of Distributor	Address	City and State
K. R. Linder	Edembower & SP RR	Roseburg, Oregon
H. G. Lease	Columbia River Hiway	St. Helens, Oregon
[fol. 803]		
Hubbard & Davis	521 Main	Sandpoint, Idaho
R. J. Kimbel	Olympia Hiway	Shelton, Washington
O. D. Snider	401 Pacific Hiway	Sumner, Washington
Jess Stiltner	6th St. & Hiway 40	Sunnyside, Washington
J. B. Crawford	River Road at Terminal Road	The Dalles, Oregon
F. W. Thomas	Foot of East Third	Tillamook, Oregon
H. E. Jesseph	13th & Sumach	Walla Walla, Washington
J. E. Miller	9th & Railroad	Wenatchee, Washington
W. S. Philipp	514 Broadway	Yakima, Washington
E. O. Argabright	12th & Juniper (P. O. Box 231)	Alturas, California
J. C. Williams	Route 1, Box 50-J	Antioch, California
J. C. Lancaster	P. O. Box 5	Blairsden, California
G. I. Reading	3rd & Clayton Rd. (P. O. Box 487)	Concord, California
R. T. Harris	Cordelia Junction & Hiway 40	Cordelia, California
G. C. Muscato	P. O. Box 577	East Ely, Nevada
A. L. Lani	1st & Main Streets (P. O. Box 628)	Elko, Nevada
E. J. Ashton	52 Ferguson St. (P. O. Box 671)	Fallon, Nevada
Cecil Roach	824 Franklin St.	Fort Bragg, California
L. C. Blaettler	U. S. 101 S. of City Limits (Box T)	Gilroy, California
B. P. Robinson	307 Washington Ave.	Grass Valley, California
D. J. Galatro	No. Hiway 33	Gustine, California
J. S. Ross	Route 2, Box 669	Hanford, California
[fol. 804]		
R. H. Booker	9th Ave. (P. O. Box 554)	Jamestown, California
R. S. Smith	Railroad & Lynn Sts. (Box 25)	King City, California
I. O. Guinn	P. O. Box 727	Lakeport, California
W. J. Bonetti	1078 Fourth St.	Livermore, California
M. J. Kennedy	221 S. Cherokee Ave. (P. O. Box 347)	Lodi, California
C. W. Fuss	So. Railroad Ave. (P. O. Box 537)	Lovelock, Nevada
L. C. Jirsa	16th & "T" Sts. (P. O. Box 691)	Merced, California
J. A. Doane	P. O. Box 33	Gardnerville, Nevada (Minden, Nevada)
E. H. Gossard	1609—9th St. (P. O. Box 845)	Modesto, California
H. T. Moss	P. O. Box 647	Monterey, California
J. V. Corbaley	6th & Pine Sts. (P. O. Box 475)	Paso Robles, California
J. H. Mahoney	P. O. Box 58	Petaluma, California
V. R. Welles	447 South "E" St. (P. O. Box 208)	Porterville, California
R. N. Martin	Veda & Willard Sts. (P. O. Box 182)	Redding, California
W. H. Kelly	Route 3, Box 746 (P. O. Box 285)	Reedley, California
R. A. Bennett	P. O. Box 1489	Salinas, California
G. E. Muttersbach	Canal Road (P. O. Box 548)	San Rafael, California

[fol. 805]

Schedule I—(cont'd.)

Name of Distributor	Address	City and State
F. J. Devins	139 Encinal St. (P. O. Box 473)	Santa Cruz, California
P. P. Gruener	Frances & Cleveland (P. O. Box 744)	Santa Rosa, California
K. R. Doyle	1110 Gay St. (P. O. Box 237)	Susanville, California
W. H. Ogan	"J" & Bush Sts. (P. O. Box 1098)	Tulare, California
L. C. Hughes	So. Front St. (P. O. Box 688)	Turlock, California
R. I. Buxton	Thomas Road (P. O. Box 388)	Ukiah, California
Merril H. Fisher	1130 E. Main St. (P. O. Box 1107)	Visalia, California
M. L. Amaral	Railroad Ave. & Salinal Road	Watsonville, California
J. F. Harris	P. O. Box 428	Weed, California
P. L. Bengochea	East Railroad St. (P. O. Box 306)	Winnemucca, Nevada
L. R. Landis	559 Bridge Street (P. O. Box 449)	Yuba City, California
George Fleetham	9th Street and Railroad Ave.	Douglas, Arizona
J. G. Langham	South Fifth St.	Globe, Arizona
Lyle E. Trimble	641 W. Main St.	Mesa, Arizona
John W. Higgins	800 Sixth Ave.	Safford, Arizona
M. W. Duncan	301 E. Railroad Street	Williams, Arizona
A. H. Shipkey	1406 W. Broadway	Anaheim, California
E. D. Clark	420 E. Main St.	Barstow, California

[fol. 806]

W. A. Dayvault	450 S. Spring St.	Blythe, California
L. C. Cox	4th & Cantaloupe Sts.	Coachella, California
H. J. Meek	4th & Quince	Escondido, California
W. L. Graves	610 Main St.	Las Vegas, Nevada
E. E. Glenn	501 S. Cleveland St.	Oceanside, California
John Vaughn	198 N. Hamilton	Pomona, California
A. W. Pitts	Fifth St. Road	Camarillo, California
R. G. Hopper	139 E. Lumber St.	Lancaster, California
Fred C. Clark	310 Sunland	Bishop, California
L. J. Begg	335 N. "G" St.	Lompoc, California
Elmer T. Schroeder	1202 S. Main St.	Lone Pine, California
A. F. Schwartz	12160 Truman St.	San Fernando, California
A. A. Meyer	130 N. Salsipuedes	Santa Barbara, California
A. C. Young	401 E. Hermosa Ave.	Santa Maria, California
E. E. Truesdell	211 N. 12th St.	Santa Paula, California
E. P. Locey	233 Dubbers St.	Ventura, California

Government Exhibit 27

Form 146 10M 1-48

CHECK SHEET

CHANGE OF SERVICE STATION LESSEE

SS#_____ LOCATION_____ TOWN_____

AGENCY_____ DATE OF CHECKOUT_____
(Last day for Outgoing Lessee)

OUTGOING LESSEE_____ HOME ADDRESS_____

INCOMING LESSEE_____ HOME ADDRESS_____

OUTGOING LESSEE	CHECK WITH INITIALS
1. Termination Agreement Form 306 Signed	
2. Collection Made For:	
A. Flat and Gallonage Rents	
B. Merchandise Account	
C. Form 609 Goodyear Purchase Orders	
D. Trade Acceptance	
E. Note Account	
F. Credit Card Customers' Payment To Dealer	
3. Form 542, Schedules Checked On Actual Physical Inventory On All Items	
A. Form 90 Prepared Charging Dealer With Broken Or Missing Equipment	
B. Form 90 Prepared Charging Worn Out Equipment To Abandonment	
C. Form 32 Prepared Requisitioning Replacements Or Repairs	
D. Burned Out Light Globes Replaced By Dealer	
E. Broken Windows Replaced By Dealer	
4. Customer Records (P & C) Files Turned Over To New Lessee	
5. Utility Bills Paid (Gas, Water, Electricity, Phone) Handle Following Complete Checkout	
6. State Sales Tax Reported And Paid To Date	
7. M. R. Form 94 Prepared On Returned Petroleum Products	
8. Station Keys Turned Over To New Lessee	
9. Inventory Stocks (All Forms In Triplicate)	
A. Form 146A — Petroleum Products	
B. Form 146B — TBA Merchandise & Supplies	
C. Form 146C — Equipment With Depreciation	
Original — Incoming Dealer	
Duplicate — Outgoing Dealer	
Triplicate — With Form 542	
10.	

INCOMING LESSEE

1. Lease, Form 542 And Schedules A, B, C, & D, Signed
2. First Month's Advance Rental Prorated And Collected
   A. Prorated Flat And Gallonage Rents Explained
3. Credit Application Form 1101 Prepared
4. Tax Exemption Certificate Form 822 Prepared
5. Lessee Advised As To Responsibility Regarding Insurance Coverage For Fire, Theft, Public Liability, Property Damage And Workmen's Compensation
6. Lessee Advised As To Reporting Social Security, Federal Old Age, Income And Personal Property Taxes And Filing Return Quarterly For State Sales Tax
7. T. B. A. Program Explained
   A. Catalogue And Price Sheets Brought Up To Date
8. Orders Placed For, Or Lessee Supplied With:
   A. Uniforms
   B. Petroleum Products
   C. Dealer Supply Department Materials
   D. Q.S.R. Bookkeeping System Installed
   E. Current Advertising
9. Application Made For:
   A. Motor Fuel Pump License (if needed)
   B. Resaler's Permit (if needed)
   C. Municipal Or County Licenses
   D. Utilities (Gas, Water, Electricity, Phone) At Completion Of Check-in
10. Lessee Advised As To His Responsibility Under State Law Governing Purchase Outgoing Lessee's Equipment And Merchandise
    A. "Notice Of Intention To Sell" Recorded
    B. "Notice Of Intention To Sell" Published
    C. Funds Placed In Escrow
11. Explanation Of Richfield Products And Their Uses
12. Explanation Of Recommended Prices On:
    A. Merchandise
    B. Services
13. Notify T. B. A. Distributor Of Change Of Lessee
14. Lease Papers Forwarded To Division Office:
    A. Form 306, Termination Agreement
    B. Form 542, Service Station Lease, And Schedules
    C. Form 464, Notice Of Change Of Dealers
    D. Form 146
15. Triplicates Of Form 146 A, B, & C Filed With Form 542 In Branch Or Agency File
16. Arrangements Made To Spend A Minimum Of Two Days With Dealer
17. "Plan For Profits" Books Supplied And Explained

Date Prepared ..... Prepared by .....
(Richfield Representative)

Government Exhibit 28

LOS ANGELES JULY 22, 9

MR. W. J. DeMARTINI

cc: Mr A C Carr

SUBJECT: S.S. #7065
35th AVE. & CHRISTY RD.
PHOENIX, ARIZONA

We entered into a 3-C contract with a Mr. Loyal Dacey on 12/23/47 covering the subject service station where we have installed two computer pumps, two 1000-gallon tanks, one compressor, one hoist, two Cox air and water wells, and three Hi-Boys, all of which equipment--under the terms of our proposition--remains Richfield property. Our 3-C proposition runs until 12/22/53 and the station is producing an average of 10,500 gallons.

On April 27, 1949 Mr. Dacey sold his property to a Ralph S. McCracken who purchased the property subject to our lease. Just recently, Mr. McCracken advised our people that he intended to serve us with a notice to relinquish our lease inasmuch as he wished to put in another brand of gasoline and operate the location as a cut-price station.

For your further information, McCracken operates another station in Phoenix, a large 10-pump unit handling Phillips 66 products (standard gasoline bought through Texas Independent and selling at a discount of 4¢ under the prevailing price in the Phoenix area).

This is the first time that I recall that we have been faced with a test on our 3-C proposition and while I recall from past conversations with you that it is extremely doubtful as to what extreme we would go to enforce this paper, nevertheless, I wish you would advise me just how far we can go and what reply we should make to McCracken when he serves us with a notice to vacate.

In addition, as pointed out above, we own a substantial amount of equipment and in the event we do not deem it wise to contest this action and are forced to relinquish this location, I certainly hope that some means can be found to compel McCracken to return our equipment to our warehouse and at his expense, that is, unless he makes a satisfactory offer to buy, which we are willing to accept.

WOKJr:wpo

W. T. DINKINS

vs. RICHFIELD (6896-Y)

ENA DUCES TECUM - NO. 2

APH NO. II ITEM NO. 8

809

390

Government Exhibit 28-A

SOUTHERN DIVISION October 3, 9

MR. A. M. SCHROEDER

PERSONAL PHOENIX

SUBJECT: SERVICE STATION #7055
35th Ave., & Christy Rd.,
Phoenix, Arizona

Reference is made to your recent letter concerning this 3-C proposition.

I am now advised as follows:

"If and when McCracken serves us with a notice to vacate, I think we should advise him that we have a lease which we intend to enforce. However, realizing our position is not too strong, it looks like it would be better business to attempt to work out something with McCracken on an amicable basis, not in any way indicating, however, that we consider our position a weak one. This requires some good salesman ship and no doubt Schroeder or Callaher can handle it on this basis."

Please be governed accordingly.

A. C. CARR

ACC/er

U. S. vs. RICHFIELD (6896-Y)
SUBPOENA DUCES TECUM - NO. 3
PARAGRAPH NO. II ITEM NO. 9

POOR COPY

Government Exhibit 29

FORM 600 35M 9-49

RICHFIELD OIL CORPORATION

155 W. WASHINGTON BLVD. - - - P.O. BOX 7927 DEL VALLE STATION
LOS ANGELES 15, CALIFORNIA

Debit or Credit Memorandum

BOMIO BROS.
SS #386-A
SANBORN & ALISAL
SALINAS, CALIFORNIA

No. A. Lima
STATION SAN FRANCISCO
ACCOUNT NO. 130
DATE JULY 26, 19 50

WE TODAY credit YOUR ACCOUNT AS FOLLOWS:

	CHARGE	CREDIT
We credit your account in the amount of $49.44 for past discounts due for the purchase of Goodyear tires and tubes		49 44

THIS PAGE BOUND VERTICAL IN BOOK

Government Exhibit 29

FORM 600 SSM 9-45

RICHFIELD OIL CORPORATION

155 W. WASHINGTON BLVD. - - - P.O. BOX 7927 DEL VALLE STATION
LOS ANGELES 15, CALIFORNIA

Debit or Credit Memorandum

BOMIO BROS.
SS #386-A
SANBORN & ALISAL
SALINAS, CALIFORNIA

No. Salinas Fed
STATION SAN FRANCISCO
ACCOUNT NO. 130
DATE JULY 26, 19 50

WE TODAY credit YOUR ACCOUNT AS FOLLOWS:

	CHARGE	CREDIT
We credit your account in the amount of $49.44 for past discounts due for the purchase of Goodyear tires and tubes		49 44
Before any of our Richfield Dealers can qualify for appreciable discounts and refunds on a purchase of Goodyear tires and tubes, it is necessary for them to make their purchases through the same supplier for a full year.		
In Salinas, however, during the year 1949, through Richfield's lack of ability to provide a supplier for the whole year, having changed distributors on three separate occasions, some of our dealers did not receive the proper discounts entitled them under Richfield's TBA set-up.		
Mr. Bomio, one of our best TBA accounts in the Salinas area is one of these dealers. Mr. Bomio has remained loyal to Richfield throughoutour many TBA distributor changes and has purchased all his TBA requirements through the authorized Richfield TBA channels. At the end of 1949 he was entitled to receive tire and tube discounts amounting to $49.44 as a result of these purchases which he did not receive. The dealer feels that unless this refund is forthcoming from Richfield he should discontinue dealing with Richfield TBA distributors entirely as it would be wiser for him to deal with a supplier that has been in business many years in order that he may retain the discounts that he is entitled to and which are openly advertised.		
TOTAL		49 44

U. S. vs. RICHFIELD (CODE-Y)
SUBPOENA DUCES TECUM - NO. 2
PARAGRAPH NO. 11 ITEM NO. 10

811

391

THIS PAGE BOUND VERTICAL IN BOOK

Case No. 2957

USA vs RICHFIELD

Dated

Government Exhibit 30

392

FORM - 203 - 7-48

SURVEY OF SERVICE STATION OPERATIONS

Dealer's Name _____ Date _____ 19__

Street Address _____ City _____ Agency _____

SS# _____ Operating Hours _____ m. To _____ m. Last Survey Made _____ 19__

Total Sales Last Month:— Gasoline _____ Motor Oil _____ Motor Oil Ratio _____

MAINTENANCE	S	U	C	TBC	PERSONAL APPEARANCE	S	U	C	TBC
MAINTENANCE SCHEDULED					NEAT and CLEAN				
BUILDING EXTERIOR CLEAN					SHAVE and HAIRCUT				
BUILDING INTERIOR CLEAN					AUTHORIZED JACKET				
CONDITION of PAINT					AUTHORIZED UNIFORM				
YARD and DRIVEWAYS					**SALES and SERVICE AIDS**				
PLANTING AREA					Performs "5" Point Safety Service				
ADJOINING AREA					Observance of Plus Sales				
WINDOWS CLEAN					Oil Napkins and Dispenser				
WINDOW DISPLAYS SET UP					Approved Windshield Cleaning Equip.				
MERCHANDISE CLEAN					Credit Card Clip Boards				
LIGHTS - Proper Size - Working					Job Tickets				
UNAUTHORIZED SIGNS					Lube Procedure Charts				
SIGNS CLEAN (Ridge, etc.)					Seat and Fender Covers				
PUMPS CLEAN - Prices Posted					Battery Service Equipment				
FIRE EXTINGUISHERS - Filled - Tagged					Tire Service Equipment				
OIL DISPENSERS - Clean - Decaled					Service Record Stickers				
CAN RACKS - Clean - Filled					P and C Cards - Box and Index				
LUBE DEPARTMENT					Date Book				
COMPRESSOR - Clean - Oil Changed					Follow-Up Cards				
LUBE EQUIPMENT - Clean - Decaled					Rubber Name Stamp				
HOIST - Clean - Working Properly					**MANAGEMENT**				
FLOOR - Clean - Sump Working Properly					Adequate Bookkeeping System				
ADEQUATE TOOLS - Well Arranged					Monthly and Daily Sales Ratios				
PROPER DISPOSAL of REFUSE					Stock Inventory				
REST ROOMS					Federal and State Taxes				
WALLS CLEAN					City and County Licenses				
FLOOR CLEAN					**MARKET DEVELOPMENT**				
TOILET BOWL CLEAN					Profit Analysis				
WASH BASIN CLEAN					Market Analysis				
MIRRORS - Clean and in place					Prospect List				
WASTE BASKETS and Sanitary Recept.					Market Area Map and Pins				
PAPER TOWELS					3 x 5 Prospect Cards				
BORAXO DISPENSER FILLED					Daily Calls Made				
TOILET TISSUE					New Customers Develop				
SEAT COVERS					Credit Card Applications				
COAT HOOKS					Use of Company Advertising				
DOORS UNLOCKED					Use of Personal Advertising				
CHECKED EVERY HOUR									

RICHFIELD DEALER

Acknowledged E. M. Dewey

RICHFIELD REPRESENTATIVE

By [illegible]

Write on reverse side what you did to help this dealer.

812

393

FORM - 205 - 7-48

SURVEY OF SERVICE STATION OPERATIONS

Dealer's Name _____ Date _____ 19__

Street Address _____ City _____ Agency _____

SS# _____ Operating Hours _____ m. To _____ m. Last Survey Made _____ 19__

Total Sales Last Month:— Gasoline _____ Motor Oil _____ Motor Oil Ratio _____

MAINTENANCE	S	U	C	TBC
MAINTENANCE SCHEDULED				
BUILDING EXTERIOR CLEAN				
BUILDING INTERIOR CLEAN				
CONDITION of PAINT				
YARD and DRIVEWAYS				
PLANTING AREA				
ADJOINING AREA				
WINDOWS CLEAN				
WINDOW DISPLAYS SET UP				
MERCHANDISE CLEAN				
LIGHTS - Proper Size - Working				
UNAUTHORIZED SIGNS		/		
SIGNS CLEAN (Ridge, etc.)				
PUMPS CLEAN - Prices Posted				
FIRE EXTINGUISHERS - Filled - Tagged				
OIL DISPENSERS - Clean - Decaled				
CAN RACKS - Clean - Filled				
LUBE DEPARTMENT				
COMPRESSOR - Clean - Oil Changed				
LUBE EQUIPMENT - Clean - Decaled				
HOIST - Clean - Working Properly				
FLOOR - Clean - Sump Working Properly				
ADEQUATE TOOLS - Well Arranged				
PROPER DISPOSAL of REFUSE				
REST ROOMS				
WALLS CLEAN				
FLOOR CLEAN				
TOILET BOWL CLEAN				
WASH BASIN CLEAN				
MIRRORS - Clean and in place				
WASTE BASKETS and Sanitary Receptacle				
PAPER TOWELS				
BORAXO DISPENSER FILLED				
TOILET TISSUE				
SEAT COVERS				
COAT HOOKS				
DOORS UNLOCKED				
CHECKED EVERY HOUR				

PERSONAL APPEARANCE	S	U	C	TBC
NEAT and CLEAN				
SHAVE and HAIRCUT				
AUTHORIZED JACKET				
AUTHORIZED UNIFORM				
SALES and SERVICE AIDS				
Performs "S" Point Safety Service				
Observance of Price Sales				
Oil Napkins and Dispenser				
Approved Windshield Cleaning Equip.				
Credit Card Clip Boards				
Job Tickets				
Lube Procedure Charts				
Seat and Fender Covers				
Battery Service Equipment				
Tire Service Equipment				
Service Record Stickers				
P and C Cards - Box and Index				
Date Book				
Follow-Up Cards				
Rubber Name Stamp				
MANAGEMENT				
Adequate Bookkeeping System				
Monthly and Daily Sales Ratios				
Stock Inventory				
Federal and State Taxes				
City and County Licenses				
MARKET DEVELOPMENT				
Profit Analysis				
Market Analysis				
Prospect List				
Market Area Map and Pins				
3 x 5 Prospect Cards				
Daily Calls Made				
New Customers Develop				
Credit Card Applications				
Use of Company Advertising				
Use of Personal Advertising				

RICHFIELD DEALER

Acknowledged _____

RICHFIELD REPRESENTATIVE

By _____

Write on reverse side what you did to help this dealer.

813

FORM - 349 - 7-48

SURVEY OF SERVICE STATION OPERATIONS

Dealer's Name H.W. Gaus Date 19

Street Address Hiway 101 City Agency

Gas# F Operating Hours m. To m. Last Survey Made 19

Total Sales Last Month:— Gasoline Motor Oil Motor Oil Ratio

MAINTENANCE	S	U	C	TBC
MAINTENANCE SCHEDULED				
BUILDING EXTERIOR CLEAN				
BUILDING INTERIOR CLEAN				
CONDITION of PAINT				
YARD and DRIVEWAYS				
PLANTING AREA				
ADJOINING AREA				
WINDOWS CLEAN				
WINDOW DISPLAYS SET UP				
MERCHANDISE CLEAN				
LIGHTS - Proper Size - Working				
UNAUTHORIZED SIGNS		✓		✓
SIGNS CLEAN (Ridge, etc.)				
PUMPS CLEAN - Prices Posted				
FIRE EXTINGUISHERS - Filled - Tagged				
OIL DISPENSERS - Clean - Decaled				
CAN RACKS - Clean - Filled				
LUBE DEPARTMENT				
COMPRESSOR - Clean - Oil Changed				
LUBE EQUIPMENT - Clean - Decaled				
HOIST - Clean - Working Properly				
FLOOR - Clean - Sump Working Properly				
ADEQUATE TOOLS - Well Arranged				
PROPER DISPOSAL of REFUSE				
REST ROOMS				
WALLS CLEAN				
FLOOR CLEAN				
TOILET BOWL CLEAN				
WASH BASIN CLEAN				
MIRRORS - Clean and in place				
WASTE BASKETS and Sanitary Receptacle				
PAPER TOWELS				
BORAXO DISPENSER FILLED				
TOILET TISSUE				
SEAT COVERS				
COAT HOOKS				
DOORS UNLOCKED				
CHECKED EVERY HOUR				

PERSONAL APPEARANCE	S	U	C	TBC
NEAT and CLEAN				
SHAVE and HAIRCUT				
AUTHORIZED JACKET				
AUTHORIZED UNIFORM				
SALES and SERVICE AIDS				
Performs "S" Point Safety Service				
Observance of Price Sales				
Oil Napkins and Dispenser				
Approved Windshield Cleaning Equip.				
Credit Card Clip Boards				
Job Tickets				
Lube Procedure Charts				
Seat and Fender Covers				
Battery Service Equipment				
Tire Service Equipment				
Service Record Stickers				
P and C Cards - Box and Index				
Date Book				
Follow-Up Cards				
Rubber Name Stamp				
MANAGEMENT				
Adequate Bookkeeping System				
Monthly and Daily Sales Ratios				
Stock Inventory				
Federal and State Taxes				
City and County Licenses				
MARKET DEVELOPMENT				
Profit Analysis				
Market Analysis				
Prospect List				
Market Area Map and Pins				
3 x 5 Prospect Cards				
Daily Calls Made				
New Customers Develop				
Credit Card Applications				
Use of Company Advertising				
Use of Personal Advertising				

RICHFIELD DEALER **RICHFIELD REPRESENTATIVE**

Acknowledged H.E. Schindler KHT By

Write on reverse side what you did to help this dealer.

814

395

SURVEY OF SERVICE STATION OPERATIONS

Dealer's Name _____ Date _____ 19__

Street Address _____ City _____ Agency _____

SS# 1 Operating Hours ____ m. To ____ m. Last Survey Made _____ 19__

Total Sales Last Month:— Gasoline _____ Motor Oil _____ Motor Oil Ratio _____

MAINTENANCE	S	U	C	TBC
MAINTENANCE SCHEDULED				
BUILDING EXTERIOR CLEAN				
BUILDING INTERIOR CLEAN				
CONDITION of PAINT				
YARD and DRIVEWAYS				
PLANTING AREA				
ADJOINING AREA				
WINDOWS CLEAN				
WINDOW DISPLAYS SET UP				
MERCHANDISE CLEAN				
LIGHTS - Proper Size - Working				
UNAUTHORIZED SIGNS				
SIGNS CLEAN (Ridge, etc.)				
PUMPS CLEAN - Prices Posted				
FIRE EXTINGUISHERS - Filled - Tagged				
OIL DISPENSERS - Clean - Decaled				
CAN RACKS - Clean - Filled				
LUBE DEPARTMENT				
COMPRESSOR - Clean - Oil Changed				
LUBE EQUIPMENT - Clean - Decaled				
HOIST - Clean - Working Properly				
FLOOR - Clean - Sump Working Properly				
ADEQUATE TOOLS - Well Arranged				
PROPER DISPOSAL of REFUSE				
REST ROOMS				
WALLS CLEAN				
FLOOR CLEAN				
TOILET BOWL CLEAN				
WASH BASIN CLEAN				
MIRRORS - Clean and in place				
WASTE BASKETS and Sanitary Recept.				
PAPER TOWELS				
BORAXO DISPENSER FILLED				
TOILET TISSUE				
SEAT COVERS				
COAT HOOKS				
DOORS UNLOCKED				
CHECKED EVERY HOUR				

PERSONAL APPEARANCE	S	U	C	TBC
NEAT and CLEAN				
SHAVE and HAIRCUT				
AUTHORIZED JACKET				
AUTHORIZED UNIFORM				
SALES and SERVICE AIDS				
Performs "5" Point Safety Service				
Observance of Plus Sales				
Oil Napkins and Dispenser				
Approved Windshield Cleaning Equip.				
Credit Card Clip Boards				
Job Tickets				
Lube Procedure Charts				
Seat and Fender Covers				
Battery Service Equipment				
Tire Service Equipment				
Service Record Stickers				
P and C Cards - Box and Index				
Date Book				
Follow-Up Cards				
Rubber Name Stamp				
MANAGEMENT				
Adequate Bookkeeping System				
Monthly and Daily Sales Ratios				
Stock Inventory				
Federal and State Taxes				
City and County Licenses				
MARKET DEVELOPMENT				
Profit Analysis				
Market Analysis				
Prospect List				
Market Area Map and Pins				
3 x 5 Prospect Cards				
Daily Calls Made				
New Customers Develop				
Credit Card Applications				
Use of Company Advertising				
Use of Personal Advertising				

RICHFIELD DEALER **RICHFIELD REPRESENTATIVE**

Acknowledged Virgil M. Harnar By [signature]

Write on reverse side what you did to help this dealer.

815

COPY BOUND

FORM - 395 - 7-48

SURVEY OF SERVICE STATION OPERATIONS

Dealer's Name [illegible] Date [illegible] 19

Street Address 824 [illegible] City [illegible] Agency [illegible]

55# F Operating Hours [illegible] m. To [illegible] m. Last Survey Made [illegible] 19

Total Sales Last Month:— Gasoline [illegible] Motor Oil [illegible] Motor Oil Ratio [illegible]

MAINTENANCE	S	U	C	TBC
MAINTENANCE SCHEDULED				
BUILDING EXTERIOR CLEAN				
BUILDING INTERIOR CLEAN				
CONDITION of PAINT				
YARD and DRIVEWAYS				
PLANTING AREA				
ADJOINING AREA				
WINDOWS CLEAN				
WINDOW DISPLAYS SET UP				
MERCHANDISE CLEAN				
LIGHTS - Proper Size - Working				
UNAUTHORIZED SIGNS				
SIGNS CLEAN (Ridge, etc.)				
PUMPS CLEAN - Prices Posted				
FIRE EXTINGUISHERS - Filled - Tagged				
OIL DISPENSERS - Clean - Decaled				
CAN RACKS - Clean - Filled				
LUBE DEPARTMENT				
COMPRESSOR - Clean - Oil Changed				
LUBE EQUIPMENT - Clean - Decaled				
HOIST - Clean - Working Properly				
FLOOR - Clean - Sump Working Properly				
ADEQUATE TOOLS - Well Arranged				
PROPER DISPOSAL of REFUSE				
REST ROOMS				
WALLS CLEAN				
FLOOR CLEAN				
TOILET BOWL CLEAN				
WASH BASIN CLEAN				
MIRRORS - Clean and in place				
WASTE BASKETS and Sanitary Recept.				
PAPER TOWELS				
BORAXO DISPENSER FILLED				
TOILET TISSUE				
SEAT COVERS				
COAT HOOKS				
DOORS UNLOCKED				
CHECKED EVERY HOUR				

PERSONAL APPEARANCE	S	U	C	TBC
NEAT and CLEAN				
SHAVE and HAIRCUT				
AUTHORIZED JACKET				
AUTHORIZED UNIFORM				
SALES and SERVICE AIDS				
Performs "8" Point Safety Service				
Observance of Price Sales				
Oil Napkins and Dispenser				
Approved Windshield Cleaning Equip.				
Credit Card Clip Boards				
Job Tickets				
Lube Procedure Charts				
Seat and Fender Covers				
Battery Service Equipment				
Tire Service Equipment				
Service Record Stickers				
P and C Cards - Box and Index				
Date Book				
Follow-Up Cards				
Rubber Name Stamp				
MANAGEMENT				
Adequate Bookkeeping System				
Monthly and Daily Sales Ratios				
Stock Inventory				
Federal and State Taxes				
City and County Licenses				
MARKET DEVELOPMENT				
Profit Analysis				
Market Analysis				
Prospect List				
Market Area Map and Pins				
3 x 5 Prospect Cards				
Daily Calls Made				
New Customers Develop				
Credit Card Applications				
Use of Company Advertising				
Use of Personal Advertising				

RICHFIELD DEALER

Acknowledged [illegible]

RICHFIELD REPRESENTATIVE

By [illegible]

Write on reverse side what you did to help this dealer.

816

USE IN CENTER

397– 398

FORM - 000 - 7-48

SURVEY OF SERVICE STATION OPERATIONS

Dealer's Name _____ Date _____ 19__

Street Address _____ City _____ Agency _____

SS# _____ Operating Hours _____ m. To _____ m. Last Survey Made _____ 19__

Total Sales Last Month:— Gasoline _____ Motor Oil _____ Motor Oil Ratio _____

MAINTENANCE	S	U	C	TBC
MAINTENANCE SCHEDULED				
BUILDING EXTERIOR CLEAN				
BUILDING INTERIOR CLEAN				
CONDITION of PAINT				
YARD and DRIVEWAYS				
PLANTING AREA				
ADJOINING AREA				
WINDOWS CLEAN				
WINDOW DISPLAYS SET UP				
MERCHANDISE CLEAN				
LIGHTS - Proper Size - Working				
UNAUTHORIZED SIGNS				
SIGNS CLEAN (Ridge, etc.)				
PUMPS CLEAN - Prices Posted				
FIRE EXTINGUISHERS - Filled - Tagged				
OIL DISPENSERS - Clean - Decaled				
CAN RACKS - Clean - Filled				
LUBE DEPARTMENT				
COMPRESSOR - Clean - Oil Changed				
LUBE EQUIPMENT - Clean - Decaled				
HOIST - Clean - Working Properly				
FLOOR - Clean - Sump Working Properly				
ADEQUATE TOOLS - Well Arranged				
PROPER DISPOSAL of REFUSE				
REST ROOMS				
WALLS CLEAN				
FLOOR CLEAN				
TOILET BOWL CLEAN				
WASH BASIN CLEAN				
MIRRORS - Clean and in place				
WASTE BASKETS and Sanitary Recept.				
PAPER TOWELS				
BORAXO DISPENSER FILLED				
TOILET TISSUE				
SEAT COVERS				
COAT HOOKS				
DOORS UNLOCKED				
CHECKED EVERY HOUR				

PERSONAL APPEARANCE	S	U	C	TBC
NEAT and CLEAN				
SHAVE and HAIRCUT				
AUTHORIZED JACKET				
AUTHORIZED UNIFORM				
SALES and SERVICE AIDS				
Performs "5" Point Safety Service				
Observance of Plus Sales				
Oil Napkins and Dispenser				
Approved Windshield Cleaning Equip.				
Credit Card Clip Boards				
Job Tickets				
Lube Procedure Charts				
Seat and Fender Covers				
Battery Service Equipment				
Tire Service Equipment				
Service Record Stickers				
P and C Cards - Box and Index				
Date Book				
Follow-Up Cards				
Rubber Name Stamp				
MANAGEMENT				
Adequate Bookkeeping System				
Monthly and Daily Sales Ratios				
Stock Inventory				
Federal and State Taxes				
City and County Licenses				
MARKET DEVELOPMENT				
Profit Analysis				
Market Analysis				
Prospect List				
Market Area Map and Pins				
3 x 5 Prospect Cards				
Daily Calls Made				
New Customers Develop				
Credit Card Applications				
Use of Company Advertising				
Use of Personal Advertising				

RICHFIELD DEALER

Acknowledged _____

RICHFIELD REPRESENTATIVE

By _____

Write on reverse side what you did to help this dealer.

817

[fol. 818] DEFENDANT'S EXHIBITS A AND B

May 8, 1951.

Wm. J. DeMartini, 555 South Flower Street, Los Angeles 17, California, Madison 9-4111.
Krystal & Paradise, Robert E. Paradise, 433 South Spring Street, Los Angeles 13, California, Trinity 1317, Attorneys for Defendant.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

Civil Action No. 6896-Y

UNITED STATES OF AMERICA, Plaintiff,

v.

RICHFIELD OIL CORPORATION, Defendant

STIPULATION RE INTRODUCTION OF CERTAIN EVIDENCE (PARAGRAPH 1 OF PLAINTIFF'S SUBPOENA DATED FEBRUARY 7, 1951)

Plaintiff and defendant by their respective counsel stipulate as follows:

1

Since March 12, 1937 to the date hereof, defendant, Richfield Oil Corporation, has used in its operations (A) leases and other forms relating to the leasing and occupancy of its L. O. Stations, and (B) sales contracts, paint contracts, leases and subleases relating to the several types of Dealer Stations. Copies of the respective forms are hereunto attached, properly identified by exhibit number.

[fol. 819] A. L. O. Stations.

The term "L. O. (leased out) Stations" as used herein refers to retail service stations owned by defendant or leased by defendant from a lessor who is a person, firm or corporation other than the operator of the station. These service stations have been leased by defendant to

operators from time to time under a written form of lease agreement designated as Form 542. The forms bearing the print dates between July of 1937 and March of 1940 contain a provision whereby said lease is made subject to termination by either party as of two specified dates during the calendar year by means of a notice in writing given thirty days prior to such dates. The dates inserted in each instance were six months apart.

The forms bearing the print date February 1941 and later print dates contain a provision to the effect that the lease is subject to termination by either party at any time by means of a twenty-four hour notice. At the time of issuance in February 1941 of the form dated February 1941, all prior Forms 542 were destroyed and all existing leases on said Forms 542 were thereupon terminated by agreement of mutual termination or by notice and were rewritten on form dated February 1941, containing the twenty-four hour termination privilege.

Used in connection with all of said Forms 542 have been forms entitled "542-A", "542-B", "542-C" and "542-D" which are exhibits designed for the purpose of indicating the real property and facilities leased thereby.

Also used from time to time in connection with said Form 542 have been Form 542-E and Form 542-F, which are in the nature of riders to be attached to said Form 542 for the purpose of amending the rentals payable thereunder.

Except as to the change above noted with respect to the term of the lease Form 542, the various reprints referred to above have been substantially the same, containing but [fol. 820] slight variations from time to time.

In December of 1945 there was issued an L. O. lease form for use in connection with large service station units designed for servicing trucks. This form bears No. 1095, print date December 1945.

Defendant has provided the following forms for use by persons applying for L. O. service stations, which forms are entitled "Dealer Franchise Application", "Application for Prospective Sublessees", "Application for Service Station Sublease", "Dealer Application" and "Application for Employment".

B. Dealer Stations.

(1) Dealer 3-C Stations (early form designated "2-B").

The term "Dealer 3-C Stations" (written on the 2-B form) as used herein relates to service stations owned by the service station dealer or leased by the service station dealer from a lessor other than defendant, which stations have thereafter been leased to defendant by written lease or by assignment of existing lease. Defendant has subleased such service stations back to the respective service station dealers and has entered into a written sales contract with each such service station dealer covering the purchase of petroleum products by the dealer from defendant. The following represent the forms used by defendant under the 3-C (2-B type) transaction:

Service Station Lease 2-B, Form SD-306—Print date March 1937.

Sublease 2-B, Form 494—Print date November 1937 (Reprint November 1940).

Consent to Assignment, Form 493-A—Print date November 1937.

Assignment of Lease, Form 493—Print date November 1937 (Reprint September 1940).

[fol. 821] Sales Contract, Form 398—Print date November 1937.

Use of the 2-B Forms of contract was discontinued in or about 1944 and as of the date hereof all have expired.

(2) Dealer 3-C Stations (later form).

The term "Dealer 3-C Stations" as used herein relates to service stations owned by the service station dealer or leased by the service station dealer from a lessor other than defendant, which stations have thereafter been leased to defendant by written lease. Defendant has subleased such service stations back to the respective service station dealers and has entered into a written sales contract with each such service station dealer covering the purchase of petroleum products by the dealer from defendant. The following

forms of contracts covering this type of transaction were first used in November of 1945:

3-C Service Station Lease, Form 362—Print date November 1945 (Reprint November 1946).
3-C Operator's Lease, Form 668—Print date November 1945 (Reprints April 1947 and September 1948).
3-C Operator's Sales Contract, Form 783—Print date November 1945 (Reprint October 1946).

The aforesaid prints of Form 783 contained a provision requiring defendant herein as seller to sell and deliver and the service station dealer to purchase and receive the dealer's entire requirements of petroleum products for resale from the service station.

In August 1948 there was printed:

3-C Operator's Sales Contract, Form 783—Print date August 1948,

[fol. 822] which had eliminated therefrom the provisions requiring the dealer to purchase his "entire requirements" of petroleum products from defendant. At the time of such print in August of 1948 all copies of the forms of 3-C Sales Contract containing the "entire requirements" provisions were destroyed and defendant immediately negotiated with all 3-C dealers to terminate the former "entire requirements" form of Sales Contracts and to execute in lieu thereof the 3-C Operator's Sales Contract Form 783, printed August 1948. As of the date hereof there are in effect only four 3-C Sales Contracts containing the "exclusive dealing" provisions.

(3) Dealer Stations.

The term "Dealer Stations" as used herein refers to those service stations operated by dealers who purchase petroleum products from defendant pursuant to written Sales Agreements and which dealers in some instances have executed written Painting Agreements with defendant. The dealer either owns the service station or leases the service station from a lessor other than defendant. The

following forms have been used with dealers coming within this category:

Sales Contract, Form 543—Bearing no print date and print date July 1937.

Sales Contract, Form 337—Bearing print date June 1938 and various print dates up to and including April 1947.

All of the above forms contain a provision that defendant herein as seller thereunder may terminate the agreement by means of a five day notice in writing.

In August 1948 there was issued:

Sales Contract—Form 337—Print date August 1948. This form contained a provision that it was subject to termination by either party on thirty days notice. At the [fol. 823] time of the issuance of this print all of the prints bearing prior dates up to and including April 1947 were destroyed.

With the issuance of said new form of Sales Contract in August 1948 there was simultaneously printed a mimeographed form designed for the purpose of amending all existing Sales Contracts so as to provide that they would thereafter be mutually terminable by either party by means of a thirty day notice in writing. Upon issuance of this form defendant immediately negotiated with the dealers to amend, by the use of this form, all existing Form 337 Sales Contracts bearing print date April 1947 or print dates prior thereto.

As a part of all Sales Contracts Forms 337, 783 and 398 there has been attached a mimeographed form designated "Schedule A" which bears reference to the aforesaid forms.

Defendant has used the following forms of contract in certain instances where defendant has painted the service station facilities of a dealer with whom defendant has executed a 337 Sales Contract:

Painting Agreement, Form 123-C—Bearing no print date and print date August 1937.

Painting Agreement, Form 59—Bearing print dates between June 1938 to and including August 1950.

2

The aforesaid Stipulation and the forms thereunto attached are stipulated to be in full compliance with the call of paragraph 1 of said Subpoena Duces Tecum dated February 7, 1951.

3

For the purpose of this case only, all of the statements hereinabove contained are stipulated to be true.

4

[fol. 824] Either party hereto may offer in evidence this Stipulation and the exhibits attached thereto.

Dated: May 3, 1951.

William C. Dixon, Special Assistant to the Attorney General, Lawrence W. Somerville, Special Attorney, Theron M. Hall, Special Attorney, Attorneys for Plaintiff, By Lawrence W. Somerville.

Wm. J. DeMartini, Krystal & Paradise, Robert E. Paradise, Attorneys for Defendant, By Wm. J. DeMartini.

RICHFIELD OIL CORPORATION

Dealer Franchise Application

Date _____

Name _____

Address _____ Phone _____

Previous Employment

Employer	Position	Period

References

Name _____ Address _____

Name _____ Address _____

Capital Assets

Name _____ Value _____

Car _____ Value _____

Current Assets _____

Liabilities

_____

_____

_____

Signed _____

APPLICATION FOR PROSPECTIVE SUBLESSEES

DATE 2/22/50

NAME IN FULL MARVIN I. WALLACK TELEPHONE SM 74603

ADDRESS 3866 Globe Ave, Culver City, Calif.

DATE OF BIRTH Sept. 11, 1923 MARRIED OR SINGLE Single

OCCUPATION DURING PREVIOUS YEARS				
FROM	TO	NAME OF EMPLOYER AND ADDRESS	NATURE OF POSITION	REASON FOR LEAVING
1/1/45	1/14/50	Peak Paint Store 8652 S. Broadway	Salesman + manager	Business Slow
1/1/49	1/1/50	Les Tamaner Shell gas station 3rd + La Cenega	Extra Help in Service Station	Extra work only

SCHOOLING: GRADE 8 YRS. HIGH 4 YRS. COLLEGE 1/2 YRS. TRAINING SCHOOL

EVER BEEN IN BUSINESS BEFORE _____ EXPLAIN _____

APPROXIMATE AMOUNT OF CAPITAL TO PUT IN BUSINESS $ _____

REFERENCES

NAME	ADDRESS AND OCCUPATION	NO. YEARS ACQUAINTED
Lester Tamener	6074 Alcott-Service station	10 years
Norman Rudnick	601 S. Soto. Doctor	15 years
Ed Bizar	3855 Globe Ave Salesman	

APPLICATION FOR SERVICE STATION SUB-LEASE

TOWN PREFERRED _____

E _____
(LAST) (FIRST) (MIDDLE)

E ADDRESS _____
(STREET) (CITY)

ONE _____ AGE _____ HEIGHT _____ WEIGHT _____

TIONALITY _____ MARRIED _____ NO. OF DEPENDENTS _____

YSICAL DEFECTS _____

UCATION _____

ME AND ADDRESS OF NEAREST RELATIVE _____

_____

ME AND LOCATION OF ANY RELATIVES EMPLOYED BY US _____

_____

RVICE STATION EXPERIENCE _____

_____

ON	TO	PREVIOUS EMPLOYMENT NAME OF EMPLOYER	ADDRESS

SH AVAILABLE _____ BANK WHERE ACCOUNT IS CARRIED _____

HER ASSETS (List Not Values, To-whit; Value Loss Encumbrances) _____

_____

_____

FERENCES (MUST BE COMMERCIAL)

1. _____ 2. _____
(NAME) (NAME)

_____ _____
(ADDRESS) (ADDRESS)

_____
(SIGNATURE OF APPLICANT)

TERVIEWER'S REMARKS
(verse side of Form)

_____
(SIGNATURE OF INTERVIEWER)

827

408

DEALER APPLICATION

NAME IN FULL _____ DATE _____

ADDRESS _____

TEL. NO. _____ WHERE BORN _____ BIRTH DATE _____

NAME, ADDRESS OF WIFE, HUSBAND, IF LIVING, OR FATHER OR MOTHER, OR NEAREST RELATIVE

NAME _____ RELATIONSHIP _____

ADDRESS _____

ANY PHYSICAL DEFECTS _____

GRADE SCHOOL _____ YRS; HIGH SCHOOL _____ HRS; COLLEGE _____ YRS. OTHER _____

FORMER EMPLOYMENT

FROM MO.& JR.	TO MO.& YR.	NAME OF EMPLOYER & SUPERVISOR	AS NATUR OF POSITION OR OCCUPATION	AT PLACE	REASON FO LEAVING

REFERENCES

NAMES AND ADDRESSES OF THREE OR MORE PERSONAL REFERENCES, PREFERABLY HOUSEHOLDERS, AND OF GOOD STANDING WHO HAVE KNOWN YOU DURING THE PAST TEN YEARS. RELATIVES OF FORMER EMPLOYERS ARE NOT TO BE LISTED.

NAME	ADDRESS AND OCCUPATION	NO OF YEARS ACQUAINTE

SIGNATURE OF APPLICANT: _____

REMARKS: _____

50-87

APPLICATION FOR EMPLOYMENT Date_____

1. Name in full_____. 2. Soc. Sec. No._____

3. Address_____

4. Tel. No._____ 5. Where born_____ 6. Birth date_____

7. Name, address of Wife, Husband, if living, or Father & Mother, or nearest relative.

Name_____ Relationship_____

Address_____

PHYSICAL CHARACTERISTICS

8. Height___ Ft.___in. 9. Weight_____lb. 10. Hair color_____. 11. Eye Color___

12. Complexion Lt.___ Med.___ Dark___ 13. Spec. marks on hands or face_____

14. Physical Defects_____

SCHOOLING & TRAINING

15. Grade School___yrs; High School___yrs; College___yrs; Other_____

16. Last School attended_____ Date of grad. or leaving_____

17. Subjects specialized in_____

ARMED SERVICE RECORD

18. From_____ to_____ Branch_____ Rank_____

Schools attended_____ Experience applicable to Service Station work_____

19. FORMER EMPLOYMENT

From Mo. & Year	To Mo. & Year	Name of Employer & Supervisor	Nature of position or occupation	Place	Reason for lvg.

20. REFERENCES

Names and addresses of three or more personal references, preferably householders, and of good standing who have known you during the past ten years. Relatives or former employers are not to be listed.

Name	Address and Occupation	Number of years Acquainted

_____
Signature of Applicant

Remarks:

410

RICHFIELD OIL CORPORATION
APPLICATION FOR EMPLOYMENT

Location_____ Date_____

IMPORTANT—Please answer every question concisely but completely. Incomplete applications cannot be considered. Applicants receiving appointments are on trial, the period of employment depending on their usefulness to the company.

FOR POSITION AS_____

GENERAL QUESTIONS

1. Name in full_____ 2. Social Security Number:_____

3. Address_____ (NUMBER, STREET, CITY OR TOWN, STATE)

4. Telephone No._____ 5. Male ☐ Female ☐

6. Married ☐ Single ☐ 7. Head of Family { Yes ☐ No. ☐ } 8. Number of Dependents_____ 9. Citizen of U.S.A. { Yes ☐ No ☐ } 10. Citizen { By Birth / Naturalized }

11. If naturalized date of First Papers_____; date of Second Papers_____ Name under

12. Where born_____ 13. Date of Birth_____ 14. Renter

15. Name and address of Wife, Husband, if living, or Father and Mother, if living, or nearest relative:

Name_____

Address_____ Relationship_____ (NUMBER, STREET, CITY OR TOWN, STATE)

16. Insurance Record: Life $_____ Health $_____ Accident $_____

17. In case of accident notify: Name_____ Telephone No._____

Address_____ Relationship_____ (NUMBER, STREET, CITY OR TOWN, STATE)

18. Names of relatives employed by the company, their position and relationship to you_____

19. Were you previously employed by this company or affiliated companies?_____ If so, where?_____

In what capacity?_____ Under supervision of_____

PHYSICAL CHARACTERISTICS

20. Height_____ Feet_____ Inches. 21. Weight_____ lbs. 22. Color of hair_____ 23. Color of eyes_____

24. Complexion: Light ☐ Medium ☐ Dark ☐ 25. Special marks on hands or face_____

26. Physical defects_____

SCHOOLING AND TRAINING

27. Schooling: Grade School____yrs.; High School____yrs.; Business College____yrs.; College____yrs.; Technical School____yrs.

28. Name of last school attended_____ Date of Graduation or leaving_____

29. Subjects specialized in_____

30. Foreign languages_____ Speak ☐ Write ☐ Fluently ☐

31. If stenographer what proficiency: Dictation_____ words per min. Transcription_____ words per

32. Accounting experience_____

33. Other office training or experience_____

830

OCCUPA..ON DURING PERIOD OF AT LEAST FIVE YEARS
WHETHER EMPLOYED OR NOT EMPLOYED

FROM	TO	IN THE SERVICE OF	AS	AT	
MONTH AND YEAR	MONTH AND YEAR	NAME OF EMPLOYER AND ADDRESS OF HEAD OFFICE	NATURE OF POSITION OR OCCUPATION	PLACE WHERE LAST EMPLOYED	REASON FOR LEAVING

6. Salary last position $_____ per _____ 16. Salary expected $_____ per _____

17. Former employers claim any unpaid balances Yes ☐ No ☐ Particulars _____

18. Application for Fidelity Bond ever been declined Yes ☐ No ☐ Particulars _____

19. Previously bonded by _____ Surety Companies

REFERENCES

20. Names and addresses of three or more personal references, preferably householders, and of good standing who have known you during the past five years. Relatives or former employers are not to be listed.

NAME	ADDRESS AND OCCUPATION	NUMBER OF YEARS ACQUAINTED

This application is submitted with the understanding that, if I enter the service of the company, I will submit to a physical examination at the company's expense.

_____
SIGNATURE OF APPLICANT

Interviewer's Remarks:

412

Defendent's Exhibit C

SURVEY OF SERVICE STATION OPERATIONS

Dealer's Name _____ Date _____

Street Address _____ City _____ Agency _____

SS# _____ Operating Hours _____ m. To _____ m. Last Survey Made _____

Total Sales Last Month:— Gasoline _____ Motor Oil _____ Motor Oil Ratio _____

MAINTENANCE	S	U	C	TBC
MAINTENANCE SCHEDULED				
BUILDING EXTERIOR CLEAN				
BUILDING INTERIOR CLEAN				
CONDITION of PAINT				
YARD and DRIVEWAYS				
PLANTING AREA				
ADJOINING AREA				
WINDOWS CLEAN				
WINDOW DISPLAYS SET UP				
MERCHANDISE CLEAN				
LIGHTS - Proper Size - Working				
UNAUTHORIZED SIGNS				
SIGNS CLEAN (Ridge, etc.)				
PUMPS CLEAN - Prices Posted				
FIRE EXTINGUISHERS - Filled - Tagged				
OIL DISPENSERS - Clean - Decaled				
CAN RACKS - Clean - Filled				
LUBE DEPARTMENT				
COMPRESSOR - Clean - Oil Changed				
LUBE EQUIPMENT - Clean - Decaled				
HOIST - Clean - Working Properly				
FLOOR - Clean - Sump Working Properly				
ADEQUATE TOOLS - Well Arranged				
PROPER DISPOSAL of REFUSE				
REST ROOMS				
WALLS CLEAN				
FLOOR CLEAN				
TOILET BOWL CLEAN				
WASH BASIN CLEAN				
MIRRORS - Clean and in place				
WASTE BASKETS and Sanitary Recept.				
PAPER TOWELS				
BORAXO DISPENSER FILLED				
TOILET TISSUE				
SEAT COVERS				
COAT HOOKS				
DOORS UNLOCKED				
CHECKED EVERY HOUR				

PERSONAL APPEARANCE	S	U	C	TBC
NEAT and CLEAN				
SHAVE and HAIRCUT				
AUTHORIZED JACKET				
AUTHORIZED UNIFORM				
SALES and SERVICE AIDS				
Performs "8" Point Safety Service				
Observance of Plus Sales				
Oil Napkins and Dispenser				
Approved Windshield Cleaning Equip.				
Credit Card Clip Boards				
Job Tickets				
Lube Procedure Charts				
Seat and Fender Covers				
Battery Service Equipment				
Tire Service Equipment				
Service Record Stickers				
P and C Cards - Box and Index				
Date Book				
Follow-Up Cards				
Rubber Name Stamp				
MANAGEMENT				
Adequate Bookkeeping System				
Monthly and Daily Sales Ratios				
Stock Inventory				
Federal and State Taxes				
City and County Licenses				
MARKET DEVELOPMENT				
Profit Analysis				
Market Analysis				
Prospect List				
Market Area Map and Pins				
3 x 5 Prospect Cards				
Daily Calls Made				
New Customers Develop				
Credit Card Applications				
Use of Company Advertising				
Use of Personal Advertising				

RICHFIELD DEALER

Acknowledged _____

RICHFIELD REPRESENTATIVE

By _____

Write on reverse side what you did to help this dealer.

833

Defendant's Exhibit D

FORM - 285 - 1M - 3-57

SURVEY OF SERVICE STATION OPERATIONS

Dealer's Name MOHRENHAUSEN BROS Date 6/2 19 50

Street Address 153 1 - 41E City Agency FARMINGTON

Operating Hours ___ m. To ___ m. Last Survey Made 4/28 19 50

Total Sales Last Month:— Gasoline ___ Motor Oil ___ Motor Oil Ratio ___

MAINTENANCE	S	U	C	TBC
MAINTENANCE SCHEDULED	8			
BUILDING EXTERIOR CLEAN	10			
BUILDING INTERIOR CLEAN	8			
CONDITION of PAINT	10			
YARD and DRIVEWAYS	8			
PLANTING AREA GRASS + SHRUBS		7		✓
ASPHALT AREA	8			
WINDOWS CLEAN		7		✓
WINDOW DISPLAYS SET UP	9			
MERCHANDISE CLEAN	10			
LIGHTS - Proper Size - Working	10			
UNAUTHORIZED SIGNS	10			
RUGS CLEAN (Floor, etc.)	10			
RESTS CLEAN - Prices Posted	9			
FIRE EXTINGUISHERS - Filled - Tagged	10			
OIL DISPENSERS - Clean - Doorbell	9			
CAN RACKS - Clean - Filled	10			
LUBE DEPARTMENT				
COMPRESSOR - Clean - Oil Changed	9			
LUBE EQUIPMENT - Clean - Doorbell	9			
HOIST - Clean - Working Properly	8			
FLOOR - Clean - Sump Working Properly	8			
ADEQUATE TOOLS - Well Arranged	9			
PROPER DISPOSAL of DRIPLUBE	10			
REST ROOMS				
WALLS CLEAN	8			
FLOOR CLEAN	10			
TOILET BOWL CLEAN	9			
WASH BASIN CLEAN	10			
MIRRORS - Clean and In Place	10			
WASTE BASKETS and Receptacles	9			
PAPER TOWELS	9			
SOAP DISPENSER FILLED	8			
TOILET TISSUE	8			
SEAT COVERS	10			
COAT HOOKS	10			
DOORS UNLOCKED	X			
SERVICE FOUNT DRUM				

PERSONAL APPEARANCE	S	U	C	TBC
NEAT and CLEAN	10			
SHAVE and HAIRCUT	10			
AUTHORIZED JACKET				
AUTHORIZED UNIFORM		✓		
SALES and SERVICE AIDS				
Performs "9" Point Safety Service				
Observance of Price Sales				
Oil Napkins and Dispenser				
Approved Windshield Cleaning Equip.	✓			
Credit Card Clip Boards				
Job Tickets				
Lube Procedure Charts				
Seat and Fender Covers				
Battery Service Equipment				
Tire Service Equipment				
Service Record Stickers				
P and C Cards - Box and Index				
Date Book				
Follow-Up Cards				
Rubber Name Stamp				
MANAGEMENT				
Adequate Bookkeeping System				
Monthly and Daily Sales Report				
Stock Inventory				
Federal and State Taxes				
City and County Licenses				
MARKET DEVELOPMENT				
Profit Analysis				
Market Analysis				
Prospect List				
Market Area Map and Plan				
5 a 5 Prospect Cards				
Daily Calls Made				
New Customers Develop				
Credit Card Applications				
Use of Company Advertising				
Use of Personal Advertising				

RICHFIELD DEALER

Acknowledged

RICHFIELD REPRESENTATIVE

By E. [illegible]

Make an account slide what you did to help this dealer.

833

FORM - [illegible]

SURVEY OF SERVICE STATION OPERATIONS

Dealer's Name MOLDENHAVER BROS Date [illegible] 19[illegible]

Street Address 4th + Venete City Bremerton Agency [illegible]

SS# 9906 Operating Hours 6:40 m. To 9 m. Last Survey Made — 19[illegible]

Total Sales Last Month:— Gasoline 5356 Motor Oil 89 Motor Oil Ratio 1.[illegible]

MAINTENANCE	S	U	C	TBC
MAINTENANCE SCHEDULED	95			
BUILDING EXTERIOR CLEAN	90			
BUILDING INTERIOR CLEAN	85			
CONDITION of PAINT	95			
YARD and DRIVEWAYS	95			
PLANTING AREA	95			
ADJOINING AREA	95			
WINDOWS CLEAN	95			
WINDOW DISPLAYS SET UP	95			
MERCHANDISE CLEAN	100			
LIGHTS - Proper Size - Working	100			
UNAUTHORIZED SIGNS	95			
SIGNS CLEAN (Ridge, etc.)	100			
PUMPS CLEAN - Prices Posted	100			
FIRE EXTINGUISHERS - Filled - Tagged	100			
OIL DISPENSERS - Clean - Decaled	100			
CAN RACKS - Clean - Filled	100			
LUBE DEPARTMENT 96%				
COMPRESSOR - Clean - Oil Changed	95			
LUBE EQUIPMENT - Clean - Decaled	95			
HOIST - Clean - Working Properly	95			
FLOOR - Clean - Sump Working Properly	95			
ADEQUATE TOOLS - Well Arranged	100			
PROPER DISPOSAL of REFUSE	100			
REST ROOMS				
WALLS CLEAN	100			
FLOOR CLEAN	100			
TOILET BOWL CLEAN	100			
WASH BASIN CLEAN	100			
MIRRORS - Clean and in place	100			
WASTE BASKETS and Sanitary Recept.	100			
PAPER TOWELS	100			
DURAXO DISPENSER FILLED	100			
TOILET TISSUE	100			
SEAT COVERS	100			
COAT HOOKS	0			✓
DOORS UNLOCKED	[illegible]			
CHECKED EVERY HOUR	[illegible]			

PERSONAL APPEARANCE	S	U	C	TBC
NEAT and CLEAN	[illegible]			
SHAVE and HAIRCUT	[illegible]			
AUTHORIZED JACKET	[illegible]			
AUTHORIZED UNIFORM	[illegible]			
SALES and SERVICE AIDS				
Performs "S" Point Safety Service	[illegible]			
Observance of Plus Sales	100			
Oil Napkins and Dispenser	0			
Approved Windshield Cleaning Equip.	90			
Credit Card Clip Boards	[illegible]			
Job Tickets	[illegible]			
Lube Procedure Charts	[illegible]			
Seat and Fender Covers	[illegible]			
Battery Service Equipment	100			
Tire Service Equipment	100			
Service Record Stickers	100			
P and C Cards - Box and Index	100			
Date Book	0			
Follow-Up Cards	0			
Rubber Name Stamp	100			
MANAGEMENT				
Adequate Bookkeeping System	100			
Monthly and Daily Sales Ratios	90			
Stock Inventory	90			
Federal and State Taxes	100			
City and County Licenses	100			
MARKET DEVELOPMENT				
Profit Analysis	25			
Market Analysis	0			
Prospect List	0			
Market Area Map and Plan	0			
3 x 5 Prospect Cards	0			
Daily Calls Made	0			
New Customers Develop	90			
Credit Card Applications	95			
Use of Company Advertising	95			
Use of Personal Advertising	95			

RICHFIELD DEALER RICHFIELD REPRESENTATIVE

Acknowledged [signature] By K. A. Elsley

Write on reverse side what you did to help this dealer.

834

Where [illegible] are average in their maintenance with dealer inspected [illegible] arrived on [illegible]. Dealer will install [illegible] books. Discussed market development, dealer against calling a [illegible]. Will keep working [illegible] to change [illegible] [illegible].

K. A. [illegible]

Defendant's Exhibit E

Full name and address of your wife: PEARL F. HEINEKIN

If wife employed, give name and address of employer: —

What is your draft classification?

Do you own in your own name any real estate?	Conservative Value	Incumbrance	Equity
Yes	$12,500	NO ✓	$12,500
Do you own any personal property?	Conservative Value	Amount of Debts Other Than Incumbrance on Real Estate	Equity

Are you buying an automobile on the installment plan? Yes Purchase Price $3500

Amount of monthly payment? Make and Year of Model

Amount of unpaid balance 500.00 Are any payments overdue? If so, give particulars. NO.

Have you or will you have any business interest other than the Service Station to which this application applies?

Give particulars. No

Applicant sign here

Witnessed

Co-Maker's Statement

Dated at

194

I am agreeable to becoming a co-maker with the applicant in signing the note, which will evidence the loan if granted. I certify the following statements are true and complete:

NAME (print) Age Married?

Residence Address (Street and Number) (Town and State) Phone

Employed by (If in business for self, give trade name) Draft Classification

Business address (Street and Number) (Town and State) Phone

How long there What is your position Kind of business

Bank Branch Checking acc't? Savings acc't?

How long have you known applicant? Location of Real estate you own

Name in which title appears Estimated value $

Are you related to applicant?

Signature of Co-Maker

836

COPY BOUND CLOS

Form 1142 3M 7-49

F HFIELD OIL CORPORATION
LOAN AND BOND APPLICATION

Amount $ 800 00 Date 4-12-50

Bond Investigation, Lease, Check In and Service Fee $ 50 00

I hereby make application for service station lease and for loan to finance service station operation. I authorize the Company to use this application for the purpose of obtaining bond with any bonding company that they may choose for an amount not exceeding $1000.

I hereby affirm that in the following declarations made and answers given I state the truth without reservation and for the purpose of obtaining this loan and also obtaining at the Company's discretion the bond.

Give name in full ERNEST P. HEINEKIN Age

Residence Address 1627 W. YORK (Street and Number) SPOKANE, WN. (City and State)

Please fill in the following blanks, giving dates of your employment and names of your employers during the past 5 years. If not employed continually, give dates of periods of non-employment, and places of residence at such time.

FROM	TO	NAME AND ADDRESS OF EMPLOYER	Nature of Position held	Place where employed or located	Name and present address of party under whom you worked	Why did you leave?
1942	1950	SELF	S.S. OPERATOR	Spokane	—	—

If bonded in any of above positions, state which, and give name and address of company or person acting as your surety

Has your application for bond ever been declined? ____ If so, by whom? ____

Give references below. Do not name a relative or fo

NAME	OCCUPATION		OFFICE ADDRESS (or and street, if in city)
1. W.V. MOYER	DOCTOR	1	681 CENTER BLDG
2. H. LANDER	DOCTOR		" " "
3. H.C. GRENDAHL	CONTRACTOR	2	08 GARFIELD ROAD

Bank FIRST NATIONAL Branch SPOKANE

Name of father AUGUST HEINEKIN { Occupation RETIRED / Address GWINNER, N.D.

Name of mother ____ Address ____

Are YOU	Number of children	How many self-supporting and live apart from you?	How many with you?	If others depend upon you for support, give names
Single ____ Married ✓ A widow ____ Divorced ____	3		4	

(OVER)

837

SE IN CENTER

Defendent's Exhibit F

RICHFIELD OIL CORPORATION

RICHFIELD BUILDING • LOS ANGELES 13 • CALIFORNIA

August 14, 1950

Mr. George A. Bauer
2990 E. Huntington Drive
San Marino, California

Dear Sir:

Reference is made to that certain letter agreement made and entered into on the 25th day of May, 1950, by the terms of which it was agreed that you would be allowed a credit of 2.2 cents per gallon on Ethyl gasoline and 1.7 cents per gallon on Hi-Octane gasoline in order to assist you in meeting competition in the immediate vicinity of your service station. It was further agreed that you would be allowed like credit as to your gasoline inventory on hand at the time the agreement was entered into.

This is to advise that all of the terms and provisions of said letter agreement are hereby cancelled effective August 14, 1950, at 8:00 A.M. At the time of cancellation you had 0 gallons of Ethyl and 0 gallons of Hi-Octane in inventory, and the aforesaid allowance will not be granted on said gallonage and your account will be charged with said amount.

Very truly yours,

RICHFIELD OIL CORPORATION

By _____
F. L. HEVLIN
For Division Manager

ACCEPTED:

_____
George A. Bauer
2990 E. Huntington Drive
San Marino, Calif.
SS #5039-C

838

POOR

RICHFIELD OIL CORPORATION

555 WEST WASHINGTON BLVD. LOS ANGELES 15 • CALIFORNIA

May 25, 1950 - 11:45 AM
Date

Mr. George A. Bauer
2000 E. Huntington Drive
San Marino, Calif.

Dear Sir:

It is understood that gasoline is currently being sold at cut prices in the immediate vicinity of your service station. To assist you in meeting this competition we are willing to allow you to sell Ethyl gasoline at 2.2 cents per gallon below our directed minimum prices and Hi-Octane at 1.7 cents per gallon below our directed minimum prices. Commencing on the date hereof and to the extent that you sell gasoline at said reduced prices we will absorb the reduction in price to the extent of 2.2 cents thereof on Ethyl and 1.7 cents thereof on Hi-Octane. You will be billed at our present prices at time of delivery and the margin allowed you aforesaid will be paid to you or credited to your account on or before the 20th day of the next succeeding month.

As to your gasoline inventory on hand as of this date consisting of 642 gallons of Ethyl gasoline and 893 gallons of Hi-Octane gasoline, we will credit your account to the extent of 2/10 cents thereof on Ethyl gasoline and 2/10 cents thereof on Hi-Octane gasoline. This agreement cancels and supersedes all of the terms and provisions of that certain letter agreement made and entered into on the 3rd day of March, 1950, and is terminable by either party at any time by written or oral notice.

Yours very truly,

RICHFIELD OIL CORPORATION

By _____
FOR DIVISION MANAGER

ACCEPTED:

_____
Dealer
George A. Bauer

2000 E. Huntington Drive
San Marino, Calif.
SS No. 5030-C
Address of Service Station

Last delivery prior to inventory verification -
Invoice No. 82211, dated 5/17/50

50-42

839

COPY

420

DATE: March 3, 1950 HOUR 12:00

LS NO.: 5039-C

SERVICE STATION LOCATION: 2990 E. Huntington at San G

San Gabriel, Calif.

GASOLINE ON HAND:

ETHYL 1300 gallons

HI-OCTANE 672 gallons

Certified Correct:

George A Bauer
Signature of Dealer
George A. Bauer

P N Zimmerman
Signature of Richfield Representative

50' #64

840

G.P.
Colorado + San Gabriel
Pasadena 24.1
32.1

RICHFIELD OIL CORPORATION

155 WEST WASHINGTON BLVD. • LOS ANGELES 15 • CALIFORNIA

George A. Bauer
2990 E. Huntington Dr.
San Gabriel, Calif.

Date: March 3, 1950

Dear Sir:

It is understood that gasoline is currently being sold at cut prices in the immediate vicinity of your service station. To assist you in meeting this competition we are willing to allow you to sell Ethyl gasoline at 2 cents per gallon and Hi-Octane gasoline at 1½ cents per gallon below our directed minimum prices. Commencing on the date hereof and to the extent that you sell gasoline at said reduced prices we will absorb the reduction in price to the extent of 2 cents per gallon on ethyl gasoline and 1½ cents per gallon on Hi-Octane gasoline. You will be billed at our present prices at time of delivery and the margin allowed you aforesaid will be paid to you or credited to your account on or before the 20th day of the next succeeding month. Like credit will be allowed as to your gasoline inventory on hand. This contract shall be terminable by either party at any time by written or oral notice.

Gab
DETAILS

RICHFIELD OIL CORPORATION
By F. L. Hevlin
F. L. HEVLIN
FOR DIVISION MANAGER

ACCEPTED:

George A. Bauer
George A. Bauer
2990 E. Huntington Dr.
San Gabriel, Calif.
Address of service station.

S. S. [illegible]

841-847

B

422

Defendent's Exhibit H-3

Form 39 1934 Ed

RICHFIELD OIL CORPORATION

PAINTING AGREEMENT

THIS AGREEMENT, made this 25th day of January, 19 51, between RICHFIELD OIL CORPORATION, herein called "Richfield", and James F. Moore herein called "Dealer",

WITNESSETH:

That WHEREAS Richfield as Seller and Dealer as Buyer have entered into a Sales Contract dated the 25th day of January, 19 51, for the term commencing on the 1st day of April, 19 51, and extending to and including the 31st day of March, 19 53, under the terms of which Dealer as Buyer thereunder agreed to purchase and receive Richfield gasolines, lubricating oils and greases for resale at Dealer's service station located at 56 N. Riverside Avenue, Medford, Oregon; and

WHEREAS Dealer desires to have the service station building at said location painted in Richfield colors and insignia and Richfield is willing, on certain conditions hereinafter set forth, to furnish, the necessary work, labor and material and to paint the aforesaid service station buildings;

NOW, THEREFORE, in consideration of the premises and of the covenants of the parties hereto, it is agreed:

1. That Dealer shall remove from the surface of the service station which is to be painted all signs and insignia, and upon completion of the painting of said service station by Richfield shall not place upon or over the painted surfaces any advertising sign, trade mark, insignia or any other matter without first procuring the consent and approval of Richfield.

2. That Richfield shall paint the aforesaid service station buildings at the above location and furnish the necessary work, labor and materials therefor at a cost of not less than $ 500.00 nor exceeding $ 750.00

3. That Dealer shall pay to Richfield, at the time of any breach of the terms of paragraph 1 of this agreement or at the time of and upon any termination by Richfield of the above mentioned Sales Contract by reason of the breach by Dealer as Buyer thereunder of any of the terms, covenants or conditions therein contained or at the time of and upon any termination by Dealer of the above mentioned Sales Contract by reason of the exercise by Dealer as Buyer thereunder of any termination privilege therein reserved other than for default of Seller, the actual sum expended by Richfield under paragraph 2 hereof, not exceeding, however, the maximum price therein set forth, together with a reasonable sum as attorney's fees in the event suit is instituted by Richfield to collect said sum, or any part thereof.

4. That in the event Dealer performs all of the terms, covenants and agreements contained in said Sales Contract above described for the full term thereof, and faithfully complies with the provisions of paragraph numbered 1 hereof, Dealer shall be under no obligation to pay the obligation set forth in paragraph numbered 3 hereof, or any part thereof; and Richfield agrees that in such event Dealer shall be discharged from said debt.

5. That Dealer, upon any expiration or sooner termination of said Sales Contract above described, shall immediately remvoe from the premises hereinabove specified all advertising, insignia, painting and/or colors indicating the dispensing or sale from said premises of Richfield products, and in the event Dealer fails so to remove said advertising, insignia, painting and/or colors within five (5) days after such expiration or sooner termination of said Sales Contract, Richfield shall have and is hereby granted the right to enter upon said premises and to repaint any buildings, pumps, tanks or other equipment thereon, to change the color or colors thereof and/or to eliminate signs and insignia therefrom and/or otherwise to remove all things which in the opinion of Richfield are indications of the sale of Richfield products thereat; and Dealer agrees to pay to Richfield on demand the entire sum so expended by Richfield in pursuance of the rights hereby granted, which said obligations of Dealer shall be in addition to that provided for in paragraph "3" hereof and shall not be discharged under the provisions of paragraph "4" hereof.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first hereinabove written.

RICHFIELD OIL CORPORATION,

By _____

James F. Moore Dealer

848

POOR

Defendent's Exhibit J

SURVEY OF SERVICE STATION OPERATIONS

Dealer's Name _____ Date _____ 19__

Street Address _____ City _____ Agency _____

B# 906 Operating Hours 2 m. To _____ m. Last Survey Made _____ 19__

Total Sales Last Month:— Gasoline _____ Motor Oil _____ Motor Oil Ratio .10

MAINTENANCE	S	U	C	TBC
MAINTENANCE SCHEDULED		✓		
BUILDING EXTERIOR CLEAN		✓		
BUILDING INTERIOR CLEAN				
CONDITION of PAINT		✓		
YARD and DRIVEWAYS				
PLANTING AREA				
ADJOINING AREA				
WINDOWS CLEAN	✓			
WINDOW DISPLAYS SET UP	✓			
MERCHANDISE CLEAN		✓		
LIGHTS - Proper Size - Working				
UNAUTHORIZED SIGNS				
SIGNS CLEAN (Ridge, etc.)				
PUMPS CLEAN - Prices Posted				
FIRE EXTINGUISHERS - Filled - Tagged				
OIL DISPENSERS - Clean - Decaled	✓			
CAN RACKS - Clean - Filled	✓			
LUBE DEPARTMENT				
COMPRESSOR - Clean - Oil Changed	✓			
LUBE EQUIPMENT - Clean - Decaled	✓			
HOIST - Clean - Working Properly	✓			
FLOOR - Clean - Sump Working Properly				
ADEQUATE TOOLS - Well Arranged				
PROPER DISPOSAL of REFUSE	✓			
REST ROOMS				
WALLS CLEAN	✓			
FLOOR CLEAN		✓		✓
TOILET BOWL CLEAN				
WASH BASIN CLEAN				
MIRRORS - Clean and in place	✓			
WASTE BASKETS and Sanitary Recept.	✓			
PAPER TOWELS				
BORAXO DISPENSER FILLED				
TOILET TISSUE	✓			
SEAT COVERS				
COAT HOOKS	✓			
DOORS UNLOCKED				
CHECKED EVERY HOUR				

PERSONAL APPEARANCE	S	U	C	TBC
NEAT and CLEAN	✓			
SHAVE and HAIRCUT				
AUTHORIZED JACKET				
AUTHORIZED UNIFORM		✓		
SALES and SERVICE AIDS				
Performs "5" Point Safety Service				
Observance of Plus Sales				
Oil Napkins and Dispenser				
Approved Windshield Cleaning Equip.				
Credit Card Clip Boards				
Job Tickets				
Lube Procedure Charts				
Seat and Fender Covers				
Battery Service Equipment				
Tire Service Equipment				
Service Record Stickers				
P and C Cards - Box and Index				
Date Book				
Follow-Up Cards	✓			
Rubber Name Stamp				
MANAGEMENT				
Adequate Bookkeeping System				
Monthly and Daily Sales Ratios				
Stock Inventory				
Federal and State Taxes				
City and County Licenses				
MARKET DEVELOPMENT				
Profit Analysis				
Market Analysis				
Prospect List				
Market Area Map and Pins				
3 x 5 Prospect Cards				
Daily Calls Made				
New Customers Develop				
Credit Card Applications				
Use of Company Advertising				
Use of Personal Advertising				

RICHFIELD DEALER

Acknowledged Don McCaw

RICHFIELD REPRESENTATIVE

By _____

Write on reverse side what you did to help this dealer.

849

R COPY

This Dealer has been closing early in the evenings & on Sunday, but his gallonage has been dropping most every month for the past four months. He is going to hire a man & stay open on Sundays. This man will be given instructions as to particular maintenance jobs to be done while he is on duty. This should give us better operation all the way through.

On the outside & inside cleanliness, this should be corrected when the station is painted.

This man was at one time a S.S. Supervisor for the Standard Oil Co, & should know what is expected in maintenance.

Don is a good salesman, & had the highest Oil Quota of any of our L/O Units so if he can be salvaged it will be better for all concerned.

Vern [illegible]

J. T. Chapman

This work in process of being cleaned up / S. Anderson.

850

Defendent's Exhibit K

[redacted]

APPLICATION FOR EMPLOYMENT

Location San Francisco Date [illegible]

IMPORTANT—Please answer every question entirely but completely. Incomplete applications cannot be considered. Applicants receiving appointments are on trial, the period of employment depending on their usefulness to the company.

FOR POSITION AS W. St.

GENERAL QUESTIONS

1. Name in full Domenic Mario Delucchi 2. Social Security Number
3. Address 838 Green St. San Francisco Calif.
(NUMBER) (STREET) (CITY OR TOWN) (STATE)
4. Telephone No. Prospect 5-4[illegible] 5. Male ☑ Female ☐
6. Married ☑ Single ☐ 7. Head of Family Yes ☑ No ☐ 8. Number of Dependents 3 9. Citizen of U.S.A. Yes ☑ No ☐ 10. Citizen By Birth Naturalization ☐
11. If naturalized date of First Papers ; date of Second Papers
12. Where born San Francisco 13. Date of Birth March 8th 1917 14. Home owner ☐ Renter ☐
15. Name and address of Wife, Husband, if living, or Father and Mother, if living, or nearest relative:
Name Josephine Delucchi
Address 838 Green St. San Francisco Calif. Relationship Wife
(NUMBER) (STREET) (CITY OR TOWN) (STATE)
16. Insurance Record: Life $ [illegible] Health $ Accident $
17. In case of accident notify: Name Josephine Delucchi Telephone No. PRospect 5-4[illegible]
Address 838 Green St. San Francisco Calif. Relationship Wife
(NUMBER) (STREET) (CITY OR TOWN) (STATE)
18. Names of relatives employed by the company, their position and relationship to you
19. Were you previously employed by this company or affiliated companies? If so, where?
In what capacity? Under supervision of

PHYSICAL CHARACTERISTICS

20. Height 5 Feet 8 Inches 21. Weight 165 lbs. 22. Color of hair Brown 23. Color of eyes Brown
24. Complexion: Light ☐ Medium ☑ Dark ☐ 25. Special marks on hands or face Scar on right hand
26. Physical defects

SCHOOLING AND TRAINING

27. Schooling: Grade School 8 yrs.; High School 3 yrs.; Business College yrs.; College yrs.; Technical School yrs.
28. Name of last school attended Galileo High School Date of Graduation or leaving 1938
29. Subjects specialized in Shop work
30. Foreign languages Italian Spanish Speak ☑ Write ☑ Fluently Yes ☐ No ☐
31. If stenographer what proficiency: Dictation words per min. Transcription words per min.
32. Accounting experience
33. Other office training or experience

851

OCCUPA[illegible] DURING PERIOD OF AT LEAST FIV[illegible] EARS
WHETHER EMPLOYED OR NOT EMPLOYED

FROM	TO	IN THE SERVICE OF	AS	AT	
MONTH AND YEAR	MONTH AND YEAR	NAME OF EMPLOYER AND ADDRESS OF HEAD OFFICE	NATURE OF POSITION OR OCCUPATION	PLACE WHERE LAST EMPLOYED	REASON FOR LEAVING
2/41	7/47	Seavenger's Protective Assn 600 Chestnut St	Collector + Driver		[illegible]
		Now working with Dr. Schreier - Bay Fidelity			

35. Salary last position $ 400.50 per month 36. Salary expected $ _____ per _____

37. Former employers claim any unpaid balances Yes ☐ No ☑ Particulars _____

38. Application for Fidelity Bond ever been declined Yes ☐ No ☑ Particulars _____

39. Previously bonded by _____ Surety Company

REFERENCES

40. Names and addresses of three or more personal references, preferably householders, and of good standing who have known you during the past five years. Relatives or former employers are not to be listed.

NAME	ADDRESS AND OCCUPATION	NUMBER OF YEAR ACQUAINTED
W. H. Scott	800 Funston Ave. Gen Mgr. Muni. Railway	2
E. K. Reynolds	3153 Scott St. Auto Parts Dealer	1
C. W. Dobie	470 Green St. Retired	10

This application is submitted with the understanding that, if I enter the service of the company, I will submit to a physical examination at the company's expense.

Domenico M. Schiavi
SIGNATURE OF APPLICANT

Interviewer's Remarks:

Recommended for any dealer at 3228 Arguello & Geary. I have watched this man in our station at Bay & Fillmore and I know him to be not only an experienced operator of sound character.

[illegible]
5-19-49

[fol. 853] DEFENDANT'S EXHIBIT L

Wm. J. DeMartini, 555 South Flower Street, Los Angeles 17, California, Madison 9-4111

Krystal & Paradise, Robert E. Paradise, 433 South Spring Street, Los Angeles 13, California, Trinity 1317, Attorneys for Defendant.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

Civil Action No. 6896-Y

UNITED STATES OF AMERICA, Plaintiff,

v.

RICHFIELD OIL CORPORATION, Defendant

STIPULATION RE INTRODUCTION OF CERTAIN EVIDENCE (PLAINTIFF'S SUBPOENA DUCES TECUM DATED FEBRUARY 7, 1951)

Plaintiff and defendant by their respective counsel stipulate as follows:

1

Attached to this Stipulation and incorporated herein are statistical data, statements and forms of contracts contained under the following respective numbers and captions:

I. Comparison of Number of Each Type of Service Station Outlet. (Items 2, 3 and 4 of subpoena.)

II. Number of Uncontracted Retail Service Stations Handling Richfield Petroleum Products.

[fol. 854] III. Statistics Concerning Service Stations Subject to Painting Agreements. (Item 5 of subpoena.)

IV(a). Annual Volume of Gasoline by States Sold to Respective Types of Service Station Outlets. (Item 6 of subpoena.)

IV(b). Annual Volume of Gasoline by States Sold to Respective Types of Service Station Outlets. (Item 6 of subpoena.)

V. Annual Volume of Lubricating Oils and Greases by States Sold to Service Station Outlets. (Item 7 of subpoena.)

VI. Annual Shipments of Gasoline, Oils, and Greases. (Item 8 of subpoena.)

VII. Statistics Relating to Automotive Accessories Selected by Richfield for Sale at Retail Service Stations. (Item 9 of subpoena.)

VIII. Statistics Concerning Automotive Accessories Purchased by Richfield. (Item 11 of subpoena.)

IX. Annual Volume and Source of Purchases of Automotive Accessories by Richfield From Various Manufacturers. (Item 12 of subpoena.)

X. Annual Volume of Sales of Automotive Accessories by Richfield to Retail Service Stations. (Item 13 of subpoena.)

XI. Annual Volume of Sales by Richfield of Automotive Accessories to TBA Distributors. (Item 14 of subpoena.)

XII. Commissions Received by Richfield and Volume of Sales of Automotive Accessories on Which Commissions Received. (Item 15 of subpoena.)

XIII. Gross Profit of Richfield on Sales of Automotive Accessories. (Item 16 of subpoena.)

[fol. 855] XIV. Volume of Sales of Automotive Accessories by TBA Distributors to Richfield Service Stations. (Item 17 of subpoena.)

XV. Data Relating to TBA Distributors. (Items 20 and 21 of subpoena.)

XVI. Loans by Richfield to TBA Distributors. (Item 23 of subpoena.)

XVII. Official Capacity of Certain Richfield Employees or Other Representatives.

2

The statistical compilations and data contained in paragraphs I and III to XVI, inclusive, are stipulated to be in full compliance with the calls of paragraphs 2 through 9, 11 through 17, 20, 21, and 23 of the subpoena served on defendant by the Government on February 7, 1951, the applicable calls of the subpoena being indicated under the respective numbers and captions listed above.

3

For the purpose of this case only, all of the data and statements contained under the said respective numbers

and captions attached to this stipulation and incorporated herein are stipulated to be true.

4

Either party hereto may offer in evidence the data attached hereto and contained under each of said numbers and captions; provided, however, that the data contained under any respective number and caption shall be offered in evidence separately from the data contained under any of such other numbers and captions.

5

Each party hereto expressly reserves the right to object to the introduction in evidence of the data contained under each of said numbers and captions upon the sole ground of lack of relevance or materiality thereof; and excepting said objection so reserved, each of the parties hereto ex- [fol 856] pressly waives all other objections to the introduction in evidence of the data contained under any of said numbers and captions.

Dated: May 3, 1951.

William C. Dixon, Special Assistant to the Attorney General, Lawrence W. Somerville, Special Attorney, Theron M. Hall, Special Attorney, Attorneys for Plaintiff, By Lawrence W. Somerville.

Wm. J. DeMartini, Krystal & Paradise, Robert E. Paradise, Attorneys for Defendant, By Wm. J. DeMartini.

[fol. 857] DEFENDANT'S EXHIBITS M AND M-1

Wm. J. DeMartini, 555 South Flower Street, Los Angeles 13, California, TRinity 2231.

Krystal & Paradise, Robert E. Paradise, 433 South Spring Street, Los Angeles 13, California, MUtual 6171, Attorneys for Defendant.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

Civil Action No. 6896-Y

UNITED STATES OF AMERICA, Plaintiff,

v.

RICHFIELD OIL CORPORATION, Defendant

STIPULATION RE INTRODUCTION OF CERTAIN EVIDENCE

Plaintiff and Defendant by their respective counsel stipulate as follows:

1

Attached to this Stipulation and incorporated herein is statistical data contained under the following respective numbers and captions:

I. Dates of Incorporation of Defendant and of Qualification to do Business.

II. Date of Commencement of Business by Defendant.

III. Comparison of Number of Service Station Outlets.

IV. Comparison of Volume of Gasoline Sold Through Service Station Outlets.

V. Comparison of Quantities of Gasoline Manufactured.

[fol. 858] VI. Comparison of Taxable Sales of Motor Vehicle Fuel.

VII. Number of Competing Companies in Sale of Gasoline. (Exhibit attached.)

VIII. Number of Competing Companies in Sale of Automotive Lubricating Oil. (Exhibit attached.)

IX. Comparison of Volume of Automotive Lubricating Oil (including grease) Sales.

X. Comparison of Volume of Tire Sales.

XI. Comparison of Volume of Battery Sales.

XII. Trends in (A) Population and (B) Motor Vehicle Registrations.

which said statistical data has been compiled by Defendant and examined by Plaintiff.

2

All of the data and statements contained under the said respective numbers and captions attached to this Stipulation are stipulated to be true.

3

Either party hereto may offer in evidence the data attached hereto and contained under each of said numbers and captions; provided, however, that the data contained under any respective number and caption shall be offered in evidence separately from the data contained under any of such other numbers and captions.

4

Each party hereto expressly reserves the right to object to the introduction in evidence of the data contained under each of said numbers and captions upon the sole ground of lack of relevance or materiality thereof; and excepting said objection so reserved, each of the parties hereto expressly waives all other objections to the introduction in evidence of the data contained under any of said numbers and [fol. 859] captions.

Dated: April 23rd, 1951.

William C. Dixon, Special Assistant to the Attorney General, W. Alan Thody, Special Assistant to the Attorney General, Lawrence W. Somerville, Special Attorney, Attorneys for Plaintiff, By William C. Dixon.

Wm. J. DeMartini, Krystal & Paradise, Robert E. Paradise, Attorneys for Defendant, By Wm. J. DeMartini.

[fol. 860] DEFENDANT'S EXHIBIT M-2

I

Incorporation of Defendant and Qualification to Do Business

Defendant Richfield Oil Corporation (herein referred to as "Richfield") is a corporation incorporated under the laws of Delaware on November 14, 1936, and qualified to do business in California on November 16, 1936, in Oregon on March 11, 1937, in Washington on March 11, 1937, in Nevada on May 7, 1937, in Arizona on June 21, 1937, and in Idaho on April 7, 1937.

[fol. 861] DEFENDANT'S EXHIBIT M-3

II

Commencement of Business by Defendant

Defendant did not engage in business until March 12, 1937, on which date it acquired the properties and assets of Richfield Oil Company of California, a Delaware corporation, and of Pan American Petroleum Company, a California Corporation, pursuant to a decree of the United States District Court for the Southern District of California, Central Division, in 77-B proceedings entitled "In the Matter of Richfield Oil Company of California, a corporation, Debtor, Pan American Petroleum Company, a corporation, Subsidiary, In Proceedings for the Reorganization of a corporation, No. 28700-J", in the records and files of said Court.

[fol. 862] DEFENDANT'S EXHIBIT M-4

III

Comparison of Number of Service Station Outlets
Definition of Terms

A. The term "L. O. (leased out) Stations" as used herein refers to the service stations owned by defendant

or leased by defendant from a lessor who is a person, firm or corporation other than the operator of the service station. These service stations have been leased by defendant to operators from time to time under written lease agreements each providing for termination of the lease agreement by either party thereto on twenty-four hours' notice.

B. The term "Dealer 3-C Stations" as used herein refers to those service stations operated by dealers who purchase petroleum products from defendant pursuant to written sales agreements. The dealer either owns the service station or leases the service station from a lessor other than defendant. The dealer has also leased the station to defendant by written lease; and the defendant has subleased the station to the dealer by written sublease.

C. The term "Dealer Stations" as used herein refers to those service stations operated by dealers who purchase petroleum products from defendant pursuant to written sales agreements and which dealers have in some instances executed written painting agreements with defendant. The dealer either owns the service station or leases the service station from a lessor other than defendant.

Description of Tables Attached

A. Table 1 sets forth the numbers of Richfield L. O. Stations, Dealer 3-C Stations and Dealer Stations by years in the respective states mentioned in the complaint, to wit, California, Oregon, Washington, Nevada, Arizona, and Idaho.

Note 1: Richfield does not market petroleum products in any states other than those enumerated.

[fol. 863] Note 2: The numbers of stations set forth in Table 1 are as of December 31 for each of the years enumerated.

[fol. 864]

Table I

Year	California				Oregon				Washington			
	Dealer				Dealer				Dealer			
	L. O.	3-C	Dlr.	Total	L. O.	3-C	Dlr.	Total	L. O.	3-C	Dlr.	Total
1938	769	269	218	1,256	78	80	119	277	160	159	117	436
1939	847	248	235	1,330	81	82	162	325	179	162	143	484
1940	914	207	297	1,418	145	77	111	333	219	150	130	499
1941	883	162	340	1,385	152	72	124	348	234	133	145	512
1942	724	118	254	1,096	147	60	64	271	241	118	90	449
1943	806	60	311	1,177	136	23	110	269	230	76	112	418
1944	776	26	311	1,113	127	13	126	266	205	47	141	393
1945	752	10	393	1,155	123	7	173	303	188	24	221	433
1946	744	34	467	1,245	114	23	191	328	178	52	272	502
1947	726	79	472	1,277	110	38	183	331	181	64	293	538
1948	775	109	508	1,392	118	44	202	364	197	76	309	582
1949	855	110	559	1,524	147	43	215	405	219	74	305	598
1950	870	116	695	1,681	148	45	221	414	218	80	309	607

[fol. 865]

Year	Nevada				Arizona				Idaho			
	Dealer				Dealer				Dealer			
	L. O.	3-C	Dlr.	Total	L. O.	3-C	Dlr.	Total	L. O.	3-C	Dlr.	Total
1938	12	3	6	21	83	—	96	179	1	1	—	2
1939	15	2	10	27	97	—	49	146	14	1	7	22
1940	18	1	10	29	100	—	60	160	16	1	7	24
1941	20	1	12	33	94	—	75	169	18	1	12	31
1942	18	1	9	28	68	—	48	116	17	1	10	28
1943	20	1	11	32	74	—	46	120	17	—	15	32
1944	17	1	4	22	68	—	34	102	16	—	13	29
1945	19	1	11	31	69	—	62	131	17	—	21	38
1946	18	1	9	28	64	7	82	153	17	—	25	42
1947	17	2	16	35	66	14	69	149	20	1	28	49
1948	20	3	15	38	70	19	73	162	22	1	29	52
1949	21	3	16	40	71	17	73	161	17	—	36	53
1950	21	3	22	46	70	17	74	161	16	—	40	56

Table I—(Continued)

[fol. 866]

Year	All States			
	Dealer			
	L. O.	3-C	Dlr.	Total
1938	1,103	512	556	2,171
1939	1,233	495	606	2,334
1940	1,412	436	615	2,462
1941	1,401	369	708	2,478
1942	1,215	298	475	1,988
1943	1,283	160	605	2,048
1944	1,209	87	629	1,925
1945	1,168	42	881	2,091
1946	1,135	117	1,046	2,298
1947	1,120	198	1,061	2,379
1948	1,202	252	1,136	2,590
1949	1,330	247	1,204	2,781
1950	1,343	261	1,361	2,965

[fol. 867] B. Table 2 sets forth a comparison of the numbers of Richfield L. O. Stations, Dealer 3-C Stations and Dealer Stations in the States of California, Oregon, Washington, Nevada and Arizona with the total number of service stations (of all companies) in the same states.

Note 1: Idaho is excluded from Table 2 since no statistics of the total number of service stations in Idaho are available.

Note 2: The numbers of stations set forth in Table 2 are as of December 31, 1948.

[fol. 868]

Table 2

Year	Total Service Stations (All companies)	Richfield L. O. Stations	Percentage Richfield L. O. Stations compared to total stations	Richfield Dealer 3-C Stations	Percentage Richfield Dealer 3-C Stations Compared to total Stations	Richfield Dealer Stations	Percentage Richfield Dealer Stations Compared to total Stations	Richfield L. O., Dealer 3-C and Dealer Stations	Percentage Richfield L. O., Dealer 3-C and Dealer Stations Compared to total Stations
1948.....	35,922	1,180	3.28%	251	.70%	1,107	3.08%	2,538	7.06%

[fol. 869] DEFENDANT'S EXHIBIT M-5

IV

Comparison of Volume of Gasoline Sold Through Service Station Outlets

Definition of Terms

A. The term "L. O. (leased out) Stations" as used herein refers to the service stations owned by defendant or leased by defendant from a lessor who is a person, firm or corporation other than the operator of the service station. These service stations have been leased by defendant to operators from time to time under written lease agreements each providing for termination of the lease agreement by either party thereto on twenty-four hours' notice.

B. The term "Dealer 3-C Stations" as used herein refers to those service stations operated by dealers who purchase petroleum products from defendant pursuant to written sales agreements. The dealer either owns the service station or leases the service station from a lessor other than defendant. The dealer has also leased the station to defendant by written lease; and the defendant has subleased the station to the dealer by written sublease.

C. The term "Dealer Stations" as used herein refers to those service stations operated by dealers who purchase petroleum products from defendant pursuant to written sales agreements and which dealers have in some instances executed written painting agreements with defendant. The dealer either owns the service station or leases the service station from a lessor other than defendant.

Description of Tables Attached

A. Table 3 sets forth by years a comparison of volume of gasoline (stated in thousands of gallons) sold by Richfield to L. O. Stations, Dealer 3-C Stations and Dealer Stations in the States of California, Oregon, Washington, Nevada and Arizona with the volume of gasoline (stated in thousands of gallons) sold by all companies to all service [fol. 870] stations in the same states.

Note 1: Idaho is excluded from Table 3 since no statistics of the total volume of gasoline sold to all service stations in Idaho are available.

[fol. 871]

Table 3

Year	Volume of Gasoline Sold by All Companies to All Stations	Volume of Gasoline Sold by Richfield to L. O. Stations	Percentage of Gasoline Sold by Richfield to L. O. Stations Compared to Total Volume of All Stations	Volume of Gasoline Sold by Richfield to Dealer 3-C Stations	Percentage of Gasoline Sold by Richfield to Dealer 3-C Stations Compared to Total Volume of All Stations	Volume of Gasoline Sold by Richfield to Dealer Stations	Percentage of Gasoline Sold by Richfield to Dealer Stations Compared to Total Volume of All Stations	Volume of Gasoline Sold by Richfield to L. O., Dealer 3-C and Dealer Stations	Percentage of Gasoline Sold by Richfield to L. O., Dealer 3-C and Dealer Stations Compared to Total Volume of All Stations
1938	1,837,841	75,743	4.12%	38,578	2.10%	12,166	.66%	126,487	6.88%
1939	1,781,133	83,626	4.70	34,121	1.92	17,166	.96	134,913	7.57
1940	1,894,679	93,978	4.96	31,719	1.68	21,517	1.14	147,214	7.77
1941	2,043,283	103,224	5.05	29,376	1.44	31,466	1.54	164,066	8.03
1942	1,692,902	76,769	4.53	19,834	1.17	24,182	1.43	120,785	7.13
1943	1,387,950	72,486	5.22	13,904	1.00	22,252	1.60	108,642	7.83
1944	1,365,987	71,094	5.20	6,484	.48	26,074	1.91	103,652	7.59
1945	1,800,207	96,092	5.34	4,563	.25	36,062	2.00	136,717	7.59
1946	2,587,830	122,033	4.72	6,257	.24	52,852	2.04	181,142	7.00
1947	2,866,050	119,566	4.17	11,827	.41	53,012	1.85	184,405	6.43
1948	3,017,269	123,543	4.09	17,039	.57	54,354	1.80	194,936	6.46
1949	3,102,604	141,563	4.56	19,807	.64	58,959	1.90	220,329	7.10
1950	3,251,556	159,334	4.90	20,385	.63	65,995	2.03	245,714	7.56

[fol. 872] B. Table 4 sets forth by years a comparison of volume of gasoline (stated in thousands of gallons) sold by Richfield to L. O. Stations, Dealer 3-C Stations and Dealer Stations in the States of Arizona, California, Idaho, Nevada, Oregon and Washington with the volume of taxable sales of motor vehicle fuel as reported to the aforementioned states by the companies distributing motor vehicle fuel subject to tax by such states.

[fol. 873]

Table 4

Year	Volume of Taxable Sales of Motor Vehicle Fuel by All Companies	Volume of Gasoline Sold by Richfield to L. O. Stations	Percentage of Gasoline Sold by Richfield to L. O. Stations Compared to Total Volume of Taxable Sales of Motor Vehicle Fuel	Volume of Gasoline Sold by Richfield to Dealer 3–C Stations	Percentage of Gasoline Sold by Richfield to Dealer 3–C Stations Compared to Total Volume of Taxable Sales of Motor Vehicle Fuel	Volume of Gasoline Sold by Richfield to Dealer Stations	Percentage of Gasoline Sold by Richfield to Dealer Stations Compared to Total Volume of Taxable Sales of Motor Vehicle Fuel	Volume of Gasoline Sold by Richfield to L. O., Dealer 3–C and Dealer Stations	Percentage of Gasoline Sold by Richfield to L. O., Dealer 3–C and Dealer Stations Compared to Total Volume of Taxable Sales of Motor Vehicle Fuel
1938.....	2,507,104	75,772	3.02%	38,641	1.54%	12,166	.49%	126,579	5.05%
1939.....	2,643,757	84,037	3.18	34,160	1.29	17,365	.66	135,562	5.13
1940.....	2,775,909	94,892	3.42	31,768	1.14	21,717	.78	148,377	5.34
1941.....	3,128,105	104,459	3.34	29,421	.94	31,655	1.01	165,535	5.29
1942.....	2,806,548	77,525	2.76	19,841	.71	24,506	.87	121,872	4.34
1943.....	2,418,113	73,243	3.03	13,904	.57	22,634	.94	109,781	4.54
1944.....	2,452,549	71,851	2.93	6,484	.26	26,542	1.08	104,877	4.27
1945.....	2,911,650	96,909	3.33	4,563	.16	36,814	1.26	138,286	4.75
1946.....	3,896,306	123,413	3.17	6,257	.16	53,880	1.38	183,550	4.71
1947.....	4,407,371	120,898	2.74	11,385	.26	53,954	1.22	186,237	4.22
1948.....	4,678,215	125,018	2.67	17,050	.36	55,355	1.18	197,423	4.21
1949.....	4,824,105	142,953	2.96	19,813	.41	60,219	1.25	222,985	4.62
1950.....	5,055,704	160,759	3.18	20,385	.40	67,476	1.33	248,620	4.91

[fol. 874] DEFENDANT'S EXHIBIT M-6

V

Comparison of Quantities of Gasoline Manufactured

Table 5 sets forth by years a comparison of the total quantities of gasoline manufactured by Richfield with the total quantities of gasoline manufactured by all companies in the States of California, Oregon, Washington, Nevada, Arizona and Idaho.

Note 1: Richfield has not manufactured gasoline in any state other than California; and has no refining facilities or equipment outside of the State of California.

Note 2: Gasoline has not been manufactured in the States of Oregon, Nevada or Arizona at any time during the period shown in Table 5.

Table 5

Year	Gasoline manufactured by Richfield (Bbls. per day)	Gasoline manufactured by all companies (Bbls. per day)	Richfield's Percentage of Total
1938	15,082	214,343	7.04%
1939	20,478	220,458	9.29
1940	20,771	214,113	9.70
1941	21,853	237,807	9.19
1942	20,937	238,009	8.80
1943	23,559	254,337	9.26
1944	28,282	304,578	9.29
1945	29,532	327,982	9.00
1946	26,591	303,986	8.75
1947	30,160	338,034	8.92
1948	31,103	345,199	9.01
1949	35,809	372,047	9.62
1950	43,163	386,501	11.17

[fol. 875] DEFENDANT'S EXHIBIT M-7

VI

Comparison of Taxable Sales of Motor Vehicle Fuel

Table 6 sets forth a comparison by years of the taxable sales of motor vehicle fuel as reported to the States of California, Oregon, Washington, Nevada, Arizona and Idaho by the companies distributing motor vehicle fuel subject to tax by such states.

[fol. 876]

Table 6

Statement of Taxable Motor Fuel Sales
(California, Oregon, Washington, Idaho, Nevada and Arizona)

Calendar year 1938

Position in Volume	Name of Company	Total Taxable Motor Fuel Sales, Gallons	Percent to Total
1	Standard Oil Company of California	447,514	17.9%
2	Shell Oil Company, Inc.	338,001	13.5
3	Union Oil Company of California	231,515	9.2
4	Richfield Oil Corporation	218,291	8.7
5	Tide Water Associated Oil Company	210,703	8.4
6	General Petroleum Corporation	190,128	7.6
7	The Texas Company	168,348	6.7
8	Wilshire Oil Company, Inc.	92,780	3.7
9	Hancock Oil Company	41,088	1.6
10	Mohawk Petroleum Corporation	40,762	1.6
11	Macmillan Petroleum Corporation	31,671	1.3
12	Pacific States Oil Company	27,729	1.1
	All Others	468,574	18.7
	Total	2,507,104	100.0%

Note: Figures are in thousands of gallons.

[fol. 877]

Table 6

Statement of Taxable Motor Fuel Sales
(California, Oregon, Washington, Idaho, Nevada and Arizona)

Calendar Year 1939

Position in Volume	Name of Company	Total Taxable Motor Fuel Sales, Gallons	Percent to Total
1	Standard Oil Company of California	470,152	17.8%
2	Shell Oil Company, Inc.	330,922	12.5
3	Richfield Oil Corporation	267,113	10.1
4	Union Oil Company of California	247,683	9.4
5	Tide Water Associated Oil Company	209,801	7.9
6	General Petroleum Corporation	190,515	7.2
7	The Texas Company	171,852	6.5
8	Wilshire Oil Company, Inc.	98,807	3.7
9	Mohawk Petroleum Corporation	35,022	1.3
10	The Caminol Oil Company, Ltd.	30,789	1.2
11	Macmillan Petroleum Corporation	27,749	1.1
12	Eagle Oil & Refining Company, Inc.	23,562	.9
	All Others	539,790	20.4
	Total	2,643,757	100.0%

Note: Figures are in thousands of gallons.

[fol. 878]

Table 6

Statement of Taxable Motor Fuel Sales
(California, Oregon, Washington, Idaho, Nevada and Arizona)

Calendar Year 1940

Position in Volume	Name of Company	Total Taxable Motor Fuel Sales, Gallons	Percent to Total
1	Standard Oil Company of California	506,058	18.2%
2	Shell Oil Company, Inc.	362,760	13.1
3	Richfield Oil Corporation	272,823	9.8
4	Union Oil Company of California	251,375	9.1
5	Tide Water Associated Oil Company	223,046	8.0
6	General Petroleum Corporation	194,346	7.0
7	The Texas Company	191,351	6.9
8	Wilshire Oil Company, Inc.	83,436	3.0
9	The Caminol Company, Ltd.	42,303	1.5
10	Eagle Oil & Refining Company, Inc.	37,787	1.4
11	Mohawk Petroleum Corporation	31,437	1.1
12	Gilmore Oil Company	26,122	1.0
	All Others	553,065	19.9
	Total	2,775,909	100.0%

Note: Figures are in thousands of gallons.

[fol. 879]

Table 6

Statement of Taxable Motor Fuel Sales
(California, Oregon, Washington, Idaho, Nevada and Arizona)

Calendar Year 1941

Position in Volume	Name of Company	Total Taxable Motor Fuel Sales, Gallons	Percent to Total
1	Standard Oil Company of California	642,229	20.5%
2	Shell Oil Company, Inc.	422,065	13.5
3	Union Oil Company of California	293,886	9.4
4	Richfield Oil Corporation	274,323	8.8
5	General Petroleum Corporation	235,737	7.5
6	Tide Water Associated Oil Company	230,792	7.4
7	The Texas Company	226,649	7.2
8	Wilshire Oil Company, Inc.	71,527	2.3
9	The Caminol Company, Ltd.	42,083	1.4
10	Rothschild Oil Company	41,811	1.3
11	Eagle Oil & Refining Company, Inc.	39,793	1.3
12	Macmillan Petroleum Corporation	23,953	.8
	All Others	583,257	18.6
	Total	3,128,105	100.0%

Note: Figures are in thousands of gallons.

[fol. 880]

Table 6

Statement of Taxable Motor Fuel Sales
(California, Oregon, Washington, Idaho, Nevada and Arizona)

Calendar Year 1942

Position in Volume	Name of Company	Total Taxable Motor Fuel Sales, Gallons	Percent to Total
1	Standard Oil Company of California	590,336	21.0%
2	Shell Oil Company, Inc.	363,708	12.9
3	Union Oil Company of California	260,012	9.3
4	General Petroleum Corporation	231,820	8.3
5	Tide Water Associated Oil Company	212,938	7.6
6	Richfield Oil Corporation	208,753	7.4
7	The Texas Company	193,933	6.9
8	Wilshire Oil Company, Inc.	61,356	2.2
9	Douglas Oil & Refining Company	57,695	2.1
10	Rothschild Oil Company	43,986	1.6
11	Mohawk Petroleum Corporation	40,141	1.4
12	The Caminol Company, Ltd.	38,513	1.4
	All Others	503,357	17.9
	Total	2,806,548	100.0%

Note: Figures are in thousands of gallons.

[fol. 881]

Table 6

Statement of Taxable Motor Fuel Sales
(California, Oregon, Washington, Idaho, Nevada and Arizona)

Calendar Year 1943

Position in Volume	Name of Company	Total Taxable Motor Fuel Sales, Gallons	Percent to Total
1	Standard Oil Company of California	525,432	21.7%
2	Shell Oil Company, Inc.	329,838	13.6
3	Union Oil Company of California	230,295	9.5
4	Richfield Oil Corporation	190,771	7.9
5	Tide Water Associated Oil Company	177,818	7.4
6	General Petroleum Corporation	173,939	7.2
7	The Texas Company	171,090	7.1
8	Wilshire Oil Company, Inc.	74,583	3.1
9	Gilmore Oil Company	59,867	2.5
10	Rothschild Oil Company	30,950	1.3
11	The Caminol Oil Company, Ltd.	28,098	1.2
12	Mohawk Petroleum Corporation	27,322	1.1
	All Others	398,110	16.4
	Total	2,418,113	100.0%

Note: Figures are in thousands of gallons.

[fol. 882]

Table 6

Statement of Taxable Motor Fuel Sales
(California, Oregon, Washington, Idaho, Nevada and Arizona)

Calendar Year 1944

Position in Volume	Name of Company	Total Taxable Motor Fuel Sales, Gallons	Percent to Total
1	Standard Oil Company of California	530,936	21.7%
2	Shell Oil Company, Inc.	316,060	12.9
3	Union Oil Company of California	244,691	10.
4	Tide Water Associated Oil Company	184,817	7.5
5	Richfield Oil Corporation	182,311	7.4
6	General Petroleum Corporation	172,661	7.0
7	The Texas Company	163,848	6.7
8	Gilmore Oil Company	90,437	3.7
9	Wilshire Oil Company, Inc.	65,396	2.7
10	Seaside Oil Company	33,172	1.4
11	Mohawk Petroleum Corporation	32,771	1.3
12	Rothschild Oil Company	32,325	1.3
	All Others	403,124	16.4
	Total	2,452,549	100.0%

Note: Figures are in thousands of gallons.

[fol. 883]

Table 6

Statement of Taxable Motor Fuel Sales
(California, Oregon, Washington, Idaho, Nevada and Arizona)

Calendar Year 1945

Position in Volume	Name of Company	Total Taxable Motor Fuel Sales, Gallons	Percent to Total
1	Standard Oil Company of California	656,916	22.6%
2	Shell Oil Company, Inc.	361,306	12.4
3	Union Oil Company of California	316,818	10.8
4	General Petroleum Corporation	304,383	10.5
5	The Texas Company	220,899	7.6
6	Richfield Oil Corporation	210,255	7.2
7	Tide Water Associated Oil Company	207,762	7.1
8	Wilshire Oil Company, Inc.	71,742	2.5
9	Seaside Oil Company	36,464	1.3
10	Hancock Oil Company	31,865	1.1
11	Mohawk Petroleum Corporation	29,464	1.0
12	The Caminol Company, Ltd.	26,113	.9
	All Others	437,663	15.0
	Total	2,911,650	100.0%

Note: Figures are in thousands of gallons.

[fol. 884]

Table 6

Statement of Taxable Motor Fuel Sales
(California, Oregon, Washington, Idaho, Nevada and Arizona)

Calendar Year 1946

Position in Volume	Name of Company	Total Taxable Motor Fuel Sales, Gallons	Percent to Total
1	Standard Oil Company of California	943,781	24.2%
2	Shell Oil Company, Inc.	479,281	12.3
3	General Petroleum Corporation	452,971	11.6
4	Union Oil Company of California	421,514	10.8
5	The Texas Company	333,184	8.6
6	Richfield Oil Corporation	277,727	7.1
7	Tide Water Associated Oil Company	270,125	6.9
8	Wilshire Oil Company, Inc.	57,890	1.5
9	Seaside Oil Company	48,068	1.2
10	Krieger Oil Company	39,526	1.0
11	Hancock Oil Company	37,260	1.0
12	Mohawk Petroleum Corporation	34,190	.9
	All Others	500,789	12.9
	Total	3,896,306	100.0%

Note: Figures are in thousands of gallons.

[fol. 885]

Table 6

Statement of Taxable Motor Fuel Sales
(California, Oregon, Washington, Idaho, Nevada and Arizona)

Calendar Year 1947

Position in Volume	Name of Company	Total Taxable Motor Fuel Sales, Gallons	Percent to Total
1	Standard Oil Company of California	1,053,684	23.9%
2	General Petroleum Corporation	528,291	11.9
3	Shell Oil Company, Inc.	510,757	11.6
4	Union Oil Company of California	489,145	11.1
5	The Texas Company	372,578	8.5
6	Tide Water Associated Oil Company	302,312	6.9
7	Richfield Oil Corporation	289,444	6.6
8	Hancock Oil Company	63,609	1.4
9	Signal Oil Company	60,260	1.4
10	Wilshire Oil Company, Inc.	55,617	1.3
11	Seaside Oil Company	54,146	1.2
12	Douglas Oil Company	44,183	1.0
	All Others	583,345	13.2
	Total	4,407,371	100.0%

Note: Figures are in thousands of gallons.

[fol. 886]

Table 6

Statement of Taxable Motor Fuel Sales
(California, Oregon, Washington, Idaho, Nevada and Arizona)

Calendar Year 1948

Position in Volume	Name of Company	Total Taxable Motor Fuel Sales, Gallons	Percent to Total
1	Standard Oil Company of California	1,006,510	21.5%
2	General Petroleum Corporation	566,283	12.1
3	Shell Oil Company, Inc.	531,154	11.3
4	Union Oil Company of California	501,758	10.7
5	The Texas Company	376,006	8.0
6	Tide Water Associated Oil Company	321,363	6.9
7	Richfield Oil Corporation	308,929	6.6
8	Signal Oil Company	158,895	3.4
9	Hancock Oil Company	89,420	1.9
10	Wilshire Oil Company, Inc.	61,210	1.3
11	Seaside Oil Company	57,232	1.2
12	Douglas Oil Company	44,048	.9
	All Others	664,407	14.2
	Total	4,678,215	100.0%

Note: Figures are in thousands of gallons.

[fol. 887]

Table 6

Statement of Taxable Motor Fuel Sales
(California, Oregon, Washington, Idaho, Nevada and Arizona)

Calendar Year 1949

Position in Volume	Name of Company	Total Taxable Motor Fuel Sales, Gallons	Percent to Total
1	Standard Oil Company of California	977,810	20.3%
2	General Petroleum Corporation	549,994	11.4
3	Shell Oil Company, Inc.	541,319	11.2
4	Union Oil Company of California	514,634	10.7
5	The Texas Company	372,720	7.7
6	Richfield Oil Corporation	340,991	7.1
7	Tide Water Associated Oil Company	326,078	6.8
8	Signal Oil Company	158,687	3.3
9	Hancock Oil Company of California	100,589	2.0
10	Wilshire Oil Company, Inc.	83,348	1.7
11	Seaside Oil Company	59,302	1.2
12	The Norwalk Company	53,120	1.1
	All Others	583,345	15.5
	Total	4,824,105	100.0%

Note: Figures are in thousands of gallons.

[fol. 888]

Table 6

Statement of Taxable Motor Fuel Sales
(California, Oregon, Washington, Idaho, Nevada and Arizona)

Calendar Year 1950

Position in Volume	Name of Company	Total Taxable Motor Fuel Sales, Gallons	Percent to Total
1	Standard Oil Company of California	957,832	18.9%
2	Shell Oil Company, Inc.	602,212	11.9
3	Union Oil Company of California	552,253	10.9
4	General Petroleum Corporation	549,620	10.9
5	The Texas Company	399,345	7.9
6	Richfield Oil Corporation	370,890	7.3
7	Tide Water Associated Oil Company	325,216	6.4
8	Signal Oil Company	165,678	3.3
9	Hancock Oil Company of California	119,790	2.4
10	Wilshire Oil Company, Inc.	103,367	2.1
11	Sunset Oil Company	79,921	1.6
12	Seaside Oil Company	65,902	1.3
	All Others	763,678	15.1
	Total	5,055,704	100.0%

Note: Figures are in thousands of gallons.

[fol. 889] VII

Number of Competing Companies in Sale of Gasoline

Table 7 sets forth by years the numbers of companies marketing to service station dealers, in excess of one million *taxable* gallons of gasoline per year in the six states in which Richfield markets gasoline, to wit, California, Oregon, Washington, Arizona, Nevada, and Idaho.

Note 1: Table 7 excludes the numbers of companies marketing in excess of one million gallons of gasoline per year in said states whose gasoline for distribution is purchased tax paid by such companies.

Table 7

Year	Number of Companies
1938	67
1939	70
1940	77
1941	74
1942	66
1943	60
1944	57
1945	61
1946	62
1947	66
1948	76
1949	69
1950	68

Attached to this stipulation marked Exhibit "A" hereto and incorporated herein by reference are lists for each of the years 1938 to 1950 separately of the names of the companies tabulated in Table 7.

[fol. 890]

Exhibit "A"

Motor Fuel Sales in Excess of One Million Net Taxable Gallons Per Year for the States of California, Arizona, Oregon, Washington, Nevada and Idaho

Company	1938	1939	1940	1941	1942	1943	1944	1945	1946	1947	1948	1949	1950
Allied Oil Co., Inc.											x	x	x
Andrews & Davis (Comet Oil)			x	x	x								
Arizona Oil Co.	x	x	x	x					x	x			
Aromalene, Inc.	x	x	x										
Bachmann Petroleum Corp.	x												
Bell Oil & Ref. Co.				x	x	x	x	x	x				
Ben Hur Refining Co.									x	x		x	x
Big West Oil Co.											x	x	x
Blue Bell Oil (Bennion)										x	x	x	x
Brown, Henry (Operator's Oil & Ref. Co.)	x	x	x	x	x	x	x	x					
Bush Co., R. R.	x	x	x										
Calstate Refining Corp.							x	x	x	x	x	x	x
Camas Oil Co.	x	x	x	x	x	x	x	x	x	x	x	x	x
Caminol Co., Ltd., The	x	x	x	x	x	x	x	x	x	x	x	x	x
[fol. 891]													
Cardinal, Joe									x	x	x	x	x
Carter Oil Co.							x	x	x	x	x	x	x
Central Ariz. Pet.											x	x	x
Century Oil Co.	x	x	x	x	x	x	x	x	x	x	x	x	x
Chief Pet. Co., Inc.									x	x			
Clack Co., H. Earl		x	x	x	x	x	x	x	x	x	x	x	x
Clipper Oil Co.											x		
Continental Oil Co.	x	x	x	x	x	x	x	x			x	x	x
Cook Oil Co.												x	x
Cooperative Oil Assn.	x	x	x	x	x	x	x	x	x	x	x	x	x
Coolen Pet. Corp.				x									
Cruzen Oil Co.													x

Davidson's Service										X	X	X		
Del Valle Gasoline Co.								X	X	X	X			
Douglas Oil Co. (Krieger)	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Eagle Oil & Ref. Co.	X	X	X	X	X	X	X	X	X	X		X	X	
[fol. 892]														
East West Refining Co.	X	X	X											
Edington Oil & Ref. Co.	X													
El Camino Ref. Co.	X	X	X	X	X									
El Tejon Oil & Ref. Co.	X	X	X	X	X	X								
Envoy Petroleum Co.	X	X	X	X	X	X	X				X		X	
Estado Pet. Corp., Ltd.	X	X	X											
Exeter Refining Co.	X	X	X	X	X	X	X		X	X				
Farmers Indep. Oil Co.				X	X	X								
Farmer's Oil Co.	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Five C Refining Co.	X		X	X	X	X	X	X	X		X			X
Fletcher Oil Co., Inc.	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Gardner Oil Co.						X	X	X	X	X	X	X	X	X
General Petroleum Corp.	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Gilmore Oil Co.	X	X	X	X	X	X	X	X						
Goar Storage											X	X	X	X
Goodman Oil Co.	X	X	X	X	X	X	X	X	X	X	X	X	X	X
[fol. 893]														
Hancock Oil of Calif.	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Harbor Refining Co.	X	X	X	X										
Harris Petroleum Corp.												X		
Idaho Refining Co.	X	X	X	X	X	X	X	X	X	X	X			
Independent Pet. Co.	X	X	X	X										
Inland Empire Ref.	X	X	X	X	X	X	X	X	X	X	X	X		
Jobbers Petroleum Sales	X	X	X	X										
Kelly Oil Co.													X	X
Los Nietos Co.	X	X	X	X	X	X				X	X			
MacMillan Petroleum Corp.	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Mangold & Tweedy		X	X	X										

Exhibit "A"

Company	1938	1939	1940	1941	1942	1943	1944	1945	1946	1947	1948	1949	1950
Martin, C. M.	x	x	x	x	x	x	x						
Maxwell Petroleum Corp.	x	x	x	x	x	x							
McCallen Refining Co.	x	x	x	x	x	x		x		x	x	x	x
McNutt Oil & Ref. Co.	x	x	x	x	x	x	x	x	x	x	x	x	x
Mercury Petroleum Corp.	x	x	x	x									
[fol. 894]													
Moffett, J. O. (San Fernando Ref. Co.)	x	x	x	x	x								
Mohawk Petroleum Corp.	x	x	x	x	x	x	x	x	x	x	x	x	x
Montana Headlight Oil Co.					x								
Newhall Refining Co.						x	x	x	x	x	x		x
Northwest Oil Co., Inc.	x	x	x	x	x	x	x	x	x	x	x	x	x
Norwalk Co., The	x	x	x	x	x	x	x	x	x	x	x	x	x
Ohio Oil Co.										x	x		
Olympic Pet. & Equip. Co.											x	x	x
Olympic Refining Co.	x	x	x	x									
Pacific Central Refinery			x	x	x								
Pacific States Oil Co.	x	x	x	x	x								
Pacific Supply Co-op.		x	x	x	x	x	x	x	x	x	x	x	x
Pathfinder Petroleum Co.			x	x	x			x		x	x	x	
Perkins Oil Co.											x	x	x
Petrol Corporation, The	x	x	x	x	x	x	x	x	x	x	x	x	x
Petrolane, Ltd.	x	x	x	x					x	x	x	x	x
[fol. 895]													
Phillips Petroleum Co.												x	x
R and V Oil Co.	x	x	x	x	x	x	x	x	x	x	x	x	x
Richfield Oil Corporation	x	x	x	x	x	x	x	x	x	x	x	x	x
Rothschild Oil Company	x	x	x	x	x	x	x	x	x	x	x	x	x
Sahuaro Petroleum Prod.			x	x	x	x	x	x	x	x	x	x	
St. Helens Pet. Co., Ltd. (Kern Oil Co.)	x	x	x										

Seaboard Oil Co. of Del.										x	x	x	x
Seaside Oil Company	x	x	x	x	x	x	x	x	x	x	x	x	x
Shell Oil Co., Inc.	x	x	x	x	x	x	x	x	x	x	x	x	x
Signal Oil Company	x	x	x	x	x	x	x	x	x	x	x	x	x
Signal Oil & Gas Co.								x	x	x	x	x	x
Sinclair Refining Co.	x	x	x	x	x	x	x	x	x	x	x	x	x
Socal Oil & Refining Co.	x	x	x	x	x	x	x	x	x	x	x	x	x
Southern Oil Co.				x				x			x	x	x
Southwest Co-op Wholesale												x	x
Standard Oil Co. of Calif.	x	x	x	x	x	x	x	x	x	x	x	x	x
[fol. 896]													
Steiner, Fred (Elm Oil Co., Ltd.)	x	x	x	x	x	x	x	x	x		x	x	x
Sun Valley Pet. Co.								x	x	x	x	x	x
Sunland Refining Corp.									x	x	x	x	
Sunray Oil Corp.		x	x	x	x	x	x	x	x		x		
Sunset Oil & Gas Co.	x	x	x	x	x	x	x	x	x	x	x	x	x
Sunset Oil Company													x
Supreme Oil Co.	x	x	x	x	x	x	x	x	x	x	x	x	x
Texas Co., The	x	x	x	x	x	x	x	x	x	x	x	x	x
Texas Ind. Oil Co.	x	x	x	x	x	x	x	x	x	x	x	x	x
Tide Water Asso. Oil Co.		x	x		x	x	x	x	x	x	x	x	x
Tiernan'Ref. Co.											x	x	x
Time Oil Co.	x	x	x	x	x	x	x	x			x	x	x
Triangle Oil & Ref. Co.		x	x	x	x	x	x	x	x	x	x	x	x
True's Oil Co.	x	x	x	x	x	x	x	x	x	x	x	x	x
Union Oil Co. of Calif.	x	x	x	x	x	x	x	x	x	x	x		
United Oil of Utah													
[fol. 897]													
Utah Oil & Refining Co.	x	x	x	x	x	x	x	x	x	x	x	x	x
Wasatch Oil Co.											x	x	
Wescott Oil Co.	x	x	x	x	x	x	x	x	x	x	x	x	x
Western Gulf Oil Co.									x	x	x	x	
Whiting Brothers			x	x	x			x	x	x	x	x	x
Wilshire Oil Co., Inc.	x	x	x	x	x	x	x	x	x	x	x	x	x
Totals	67	70	77	74	66	60	57	61	62	66	76	69	68

[fol. 898] DEFENDANT'S EXHIBIT M-9

VIII

Number of Competing Companies in Sale of Automotive Lubricating Oil

Table 8 sets forth by years the numbers of companies marketing to service station dealers their own brand or brands of automotive lubricating oil either manufactured or purchased by such companies in the States mentioned in the Complaint.

Note 1: Table 8 excludes the numbers of companies, both jobbers, distributors and wholesalers, marketing to service station dealers one or more of the brands of lubricating oil marketed by any of the companies tabulated in Table 8.

Note 2: No authoritative data is available for years prior to 1946.

Table 8

Year	Number of Companies
1946	100
1947	100
1948	101
1949	121
1950	121

Attached to this stipulation marked Exhibit "A" hereto and incorporated herein by reference is a list for the years 1946 to 1950, inclusive, of the names of the companies tabulated in Table 8.

[fol. 899] EXHIBIT "A"

(2) AAA Products
(2) Adlube Oil Company
Alemite Corporation
Airways Oil Company
All-Lube Corporation
Bareco Oil Company
Barkow Petroleum Company
Battenfeld
Ben Hur Refining Corporation
Big West Oil Company of Montana

(2) Brassfield and Company, Inc.
Caminol Company
Carter Oil Company
Cato Oil Company
Century Oil Company
Clack Company, H. Earl
Coast Oil Company
Continental Oil Company
Cooperative Oil Association
Culley-Consumers Coop.
Dacus Oil Company
Douglas Oil and Refining Company
Eagle Oil and Refining Company, Inc.
(2) E. J. DeSemple and Company
Exeter Refining Company
(2) Far-Best Corporation
Farmers Oil Company
(3) Ferrar Company
Fisk Brothers
Fletcher Oil Compa
(2) Fred Meyers, Inc.
Freedom Valvoline Company
Gardner Oil Company
Globe Grease and Manufacturing Company
General Petroleum Corporation
Golden Bear Oil Company
Golden State Oil Company
Hadley Products, Inc.
Hancock Oil Company of California
Harbor Refining Company
Hercules Oil Company
Hollunshead, R. N., Corporation
Houghton, E. F. and Company
Humes Refining Company
(2) Hydrotex (Lubricants)
Hyvis Oil Company
Idaho Refining Company
Kendall Oil Company
Kern Oil Company
Keystone Lub. Company
Langley Oil Company

(2) Life-Lube Oil Corp.
MacMillan Petroleum Corporation
Master Lub. Company
(2) McClure, Dist. Company (Bardahl)
Mission Oil Company
M. K. Oil Company
Mohawk Petroleum Corporation
Montgomery, Ward and Company
(2) National Carbon Corp. (Prestone M. O.)
(2) National Oil Company
[fol. 900] Navy Oil Company
Northwest Oil Company
Norwalk Company
(2) Nu-Way Oil Company
Olympic Petroleum and Equip.
Pacific Oil Sales
(2) Pacific Products Corp.
(2) Panther Oil and Grease Mfg. Company
Paramount Oil Company
Para-Penn Oil Company
Pennant Oil and Grease Company
Pennzoil Company
(2) Perkins Oil Company
Petrol Corporation
Petroleum Products Company
(2) Phillips Petroleum Company
Pow-R-Flo (Gardner Dist. Company)
Pyro Penn Products Company
Quaker State Oil Company
Rasmussen Oil Company
Ray Brothers
Refiners' Marketing
(1) Refinol Company
Richfield Oil Corporation
Rothschild Oil Company
Ryt Oil Company
Sears-Roebuck and Company
Seaside Oil Company
Shell Oil Company, Inc.
Signal Oil Company
Sinclair Refining Company

(2) Smith-Allen Company
(2) Spotoil Distributing, Inc.
Standard Oil Company of California
Stewart, D. A. Company
Sunland Refining Corporation
Sunset Oil Company
Sunset-Fisch Corp.
Superior Refineries
The Lubrico Company of Phila.
The Texas Company
Tide-Water Associated Oil Company
Time Oil Company
Tokay Oil Company
(2) Tri-State Motor Oil
True's Oil Company
Union Oil Company of California
Union Supply Company
United Oil Company
United Oil of Idaho
Utah Oil Refining Company
Valvoline Oil Company
Vulcan Petroleum Company
Wasatch Dixie Oil Company
Wasatch Oil Refining Company
Western Auto Supply Company
West Point Oil Company (LA)
Wilshire Oil Company
Withrow, A. C.
[fol. 901] (2) Wynnoil Company
(2) Wypenn Oil Company

Note: (1) This company was organized in September of 1948. (2) These companies came into existence in 1949. (3) This company renamed Far-Best Corporation in 1949. (4) All of the other companies listed were in business during the years 1946, 1947, 1948, 1949 and 1950.

[fol. 902] DEFENDANT'S EXHIBIT M-10

IX

Comparison of Volume of Automotive Lubricating Oil (Including Grease) Sales

Table 9 sets forth by years a comparison of the volume of automotive lubricating oil (including grease) sold by Richfield to service stations in the States of Arizona, California, Idaho, Nevada, Oregon and Washington, with the total volume of automotive lubricating oil (including grease) sold by all companies in the same states.

Table 9

Year	Volume of Lube Oil (Gallons) Sold by All Companies	Volume of Lube Oil (Gallons) Sold by Richfield	Percentage of Lube Oil Sold By Richfield Compared to Total Lube Oil Sales
1938	57,288,420	2,647,424	4.62
1939	58,223,690	2,858,290	4.91
1940	58,791,556	3,010,117	5.12
1941	67,516,829	3,273,003	4.85
1942	69,770,268	2,114,341	3.03
1943	67,331,081	1,751,520	2.60
1944	76,336,831	2,021,113	2.65
1945	96,761,247	2,916,740	3.01
1946	118,676,035	3,056,353	2.58
1947	135,642,780	3,241,263	2.39
1948	Not Available	3,173,161	
1949	Not Available	3,290,870	
1950	Not Available	3,491,369	

[fol. 903] DEFENDANT'S EXHIBIT M-11

X

Comparison of Volume of Tire Sales

Definition of Terms

A. The term "L. O. (leased out) Stations" as used herein refers to the service stations owned by defendant or leased by defendant from a lessor who is a person, firm or corporation other than the operator of the service station. These service stations have been leased by defendant to operators from time to time under written lease agreements each pro-

viding for termination of the lease agreement by either party thereto on twenty-four hours' notice.

B. The term "Dealer 3-C Stations" as used herein refers to those service stations operated by dealers who purchase petroleum products from defendant pursuant to written sales agreements. The dealer either owns the service station or leases the service station from a lessor other than defendant. The dealer has also leased the station to defendant by written lease; and the defendant has subleased the station to the dealer by written sublease.

C. The term "Dealer Stations" as used herein refers to those service stations operated by dealers who purchase petroleum products from defendant pursuant to written sales agreements and which dealers have in some instances executed written painting agreements with defendant. The dealer either owns the service station or leases the service station from a lessor other than defendant.

D. The term "T. B. A. Distributors" as used herein refers to distributors of automotive accessories who sell the same both to operators of service stations handling and selling defendant's petroleum products and also to operators of service stations not handling or selling defendant's petroleum products.

Description of Tables Attached

A. Table 10 sets forth by years a comparison of the [fol. 904] volume of tires sold to Richfield L. O. Stations, Dealer 3-C Stations and Dealer Stations in the States of California, Oregon, Washington, Arizona, Nevada and Idaho with the total volume of tires sold in such states.

Note 1: Industry statistics (total volume of tires sold) exclude tires sold for installation on new or original equipment; and accordingly, all statistics in Table 10 relate to tire replacement sales only.

Note 2: Except in a few instances (involving less than 3% of the total volume of tires sold) Richfield has not sold tires directly to the operators or dealers of service stations, either L. O. Stations, Dealer 3-C Stations or Dealer Stations during the years shown in Table 10. In the great majority of instances (involving more than 97% of the total

volume of tires sold) the volume of tires set forth in Table 10 were sold by Richfield to "T. B. A. distributors".

In making this stipulation Richfield has informed plaintiff United States that the volume of tires so sold by Richfield to T. B. A. distributors has been resold by T. B. A. distributors to various service stations including not only Richfield L. O. Stations, Dealer 3-C Stations and Dealer Stations but also service stations not handling or dispensing any Richfield petroleum products.

No records are available to Richfield which will disclose the exact breakdown between the number of tires sold by said T. B. A. distributors to (a) L. O. Stations, Dealer 3-C Stations and Dealer Stations and (b) service stations not handling Richfield petroleum products; but Richfield has [fol. 905] informed plaintiff United States that the T. B. A. distributors have advised Richfield that in their opinion in excess of 30% of tires sold by T. B. A. distributors were sold to service stations not handling Richfield petroleum products.

Accordingly, the volume of tires sold to Richfield L. O. Stations, Dealer 3-C Stations and Dealer Stations as set forth in Table 10 has been computed by elimination from the number of tires sold by Richfield to T. B. A. distributors of the portion thereof (30%) which the T. B. A. distributors have advised Richfield were sold by T. B. A. distributors to service stations not handling Richfield petroleum products.

Note 3: Table 10 relates to the period from 1944 to 1950, inclusive, since Richfield has no records for years prior to 1944 of the total number of tires sold by Richfield either to service stations or "T. B. A. distributors".

Table 10

Year	Total Tires Sold	Tires Sold to L. O. Stations, Dealer 3-C Stations and Dealer Stations	Percentage of Tires Sold to L. O. Stations, Dealer 3-C Stations and Dealer Stations Compared with Total Tires Sold
1944.....	3,624,770	31,435	.87%
1945.....	5,026,726	42,237	.84%
1946.....	8,854,306	72,596	.84%
1947.....	8,691,398	88,033	1.02%
1948.....	Not Available	92,833	
1949.....	Not Available	51,554	
1950.....	Not Available	52,976	

[fol. 906] DEFENDANT'S EXHIBIT M-12

XI

Comparison of Volume of Battery Sales

Definition of Terms

A. The term "L. O. (leased out) Stations" as used herein refers to the service stations owned by defendant or leased by defendant from a lessor who is a person, firm or corporation other than the operator of the service station. These service stations have been leased by defendant to operators from time to time under written lease agreements each providing for termination of the lease agreement by either party thereto on twenty-four hours' notice.

B. The term "Dealer 3-C Stations" as used herein refers to those service stations operated by dealers who purchase petroleum products from defendant pursuant to written sales agreements. The dealer either owns the service station or leases the service station from a lessor other than defendant. The dealer has also leased the station to defendant by written lease; and the defendant has subleased the station to the dealer by written sublease.

C. The term "Dealer Stations" as used herein refers to those service stations operated by dealers who purchase petroleum products from defendant pursuant to written sales agreements and which dealers have in some instances executed written painting agreements with defendant. The dealer either owns the service station or leases the service station from a lessor other than defendant.

D. The term "T. B. A. Distributors" as used herein refers to distributors of automotive accessories who sell the same both to operators of service stations handling and selling defendant's petroleum products and also to operators of service stations not handling or selling defendant's petroleum products.

Description of Tables Attached

A. Table 11 sets forth by years a comparison of the [fol. 907] volume of batteries sold to Richfield L. O. Stations, Dealer 3-C Stations and Dealer Stations in the States

of California, Oregon, Washington, Arizona, Nevada and Idaho with the total volume of batteries sold in such states.

Note 1: Industry statistics (total volume of batteries sold) exclude batteries sold for installation on new or original equipment; and accordingly, all statistics in Table 11 relate to battery replacement sales only.

Note 2: Except in a few instances (involving less than 3% of the total volume of batteries sold) Richfield has not sold batteries directly to the operators or dealers of service stations, either L. O. Stations, Dealer 3-C Stations or Dealer Stations during the years shown in Table 11. In the great majority of instances (involving more than 97% of the total volume of batteries sold) the volume of batteries set forth in Table 11 was sold by Richfield to "T. B. A. distributors".

In making this stipulation Richfield has informed plaintiff United States that the volume of batteries so sold by Richfield to T. B. A. distributors has been resold by T. B. A. distributors to various service stations including not only Richfield L. O. Stations, Dealer 3-C Stations and Dealer Stations but also service stations not handling or dispensing any Richfield petroleum products.

No records are available to Richfield which will disclose the exact breakdown between the number of batteries sold by said T. B. A. distributors to (a) L. O. Stations, Dealer 3-C Stations and Dealer Stations and (b) service stations not handling Richfield petroleum products; but Richfield [fol. 908] has informed plaintiff United States that the T. B. A. distributors have advised Richfield that in their opinion in excess of 30% of batteries sold by T. B. A. distributors were sold to service stations not handling Richfield petroleum products.

Accordingly, the volume of batteries sold to Richfield L. O. Stations, Dealer 3-C Stations and Dealer Stations as set forth in Table 11 has been computed by elimination from the number of batteries sold by Richfield to T. B. A. distributors of the portion thereof (30%) which the T. B. A. distributors have advised Richfield were sold by T. B. A. distributors to service stations not handling Richfield petroleum products.

Note 3: Table 11 relates to the period from 1944 to 1950, inclusive, since Richfield has no records for years prior to 1944 of the total number of batteries sold by Richfield either to service stations or "T. B. A. distributors".

Table 11

Year	Total Batteries Sold	Batteries Sold to L. O. Stations, Dealer 3-C Stations and Dealer Stations	Percentage of Batteries Sold to L. O. Stations, Dealer 3-C Stations and Dealer Stations Compared with Total Batteries Sold
1944	2,624,491	51,392	1.95%
1945	2,419,768	36,137	1.49%
1946	2,368,974	35,867	1.51%
1947	3,377,746	43,028	1.27%
1948	Not Available	43,235	
1949	Not Available	16,528	
1950	Not Available	18,056	

[fol. 909] DEFENDANT'S EXHIBIT M-13

XII

Trends in (A) Population and (B) Motor Vehicle Registrations

A. Table 12 sets forth by years the populations of the States of California, Oregon, Washington, Nevada, Arizona and Idaho.

[fol. 910]

Table 12

Year	California	Oregon	Washington	Nevada	Arizona	Idaho
1938	6,656,000	1,067,000	1,698,000	105,000	466,000	513,000
1939	6,785,000	1,081,000	1,715,000	107,000	484,000	521,000
1940	6,907,387	1,089,684	1,736,191	110,247	499,261	524,873
1941	7,371,000	1,139,000	1,820,000	117,000	532,000	539,000
1942	7,862,000	1,160,000	1,920,000	131,000	595,000	523,000
1943	8,468,000	1,236,000	2,033,000	143,000	702,000	498,000
1944	8,697,000	1,305,000	2,100,000	144,000	598,000	559,000
1945	9,073,000	1,311,000	2,175,000	140,000	570,000	522,000
1946	9,471,000	1,434,000	2,293,000	133,000	596,000	524,000
1947	9,812,000	1,545,000	2,357,000	139,000	644,000	525,000
1948	10,031,000	1,626,000	2,487,000	142,000	664,000	530,000
1949	10,665,000	1,736,000	2,582,000	174,000	745,000	592,000
1950	10,586,223	1,521,341	2,378,963	160,083	749,587	588,637
% Increase since 1938	59.0%	42.6%	40.1%	52.5%	60.9%	14.7%

[fol. 911] B. Table 13 sets forth by years motor vehicle registrations in the States of California, Oregon, Washington, Nevada, Arizona, and Idaho.

[fol. 912] Table 13

Year	California	Oregon	Washington	Nevada	Arizona	Idaho
1941.....	2,962,222	429,440	617,030	48,160	144,401	171,031
1942.....	2,907,001	417,566	610,309	50,406	141,005	157,106
1943.....	2,749,720	408,412	596,585	50,398	136,543	148,846
1944.....	2,780,051	410,633	603,281	46,781	137,231	147,563
1945.....	2,893,559	421,387	625,817	47,469	147,831	153,902
1946.....	3,141,142	468,583	657,826	51,830	164,154	172,908
1947.....	3,527,128	531,875	727,124	58,743	190,919	195,389
1948.....	3,798,813	574,331	791,226	63,223	216,702	221,983
1949.....	4,161,109	632,109	858,522	69,119	240,359	243,749
1950.....	4,446,000	675,000	901,000	74,000	257,000	264,000
% Increase since 1941....	50.1%	57.2%	46.0%	53.7%	78.0%	54.4%

Note 1: Figures shown exclude motorcycles and trailers.

Note 2: Figures for 1950 are estimates as published by state authorities and compiled and issued by Bureau of Public Roads—Department of Commerce.

(Here follow 2 Photolithographs, side folios 913, 914)

Defendent's Exhibit N

FORM 700

...ICHFIELD OIL CORPORATI...

PART I
(For General Office Use)

Exempt	☐
Subject	☐
Approval:	
Date:	

DEPARTMENT LOCATION Control Schedule

CLASSIFICATION BRANCH MERCHANDISER EFFECTIVE

SALARY RANGE BASIC RATE

PART II
Job Description

1. WHAT ARE NECESSARY QUALIFICATIONS: (State briefly essential experience, training and abilities considered necessary to satisfactory performance)

Age: 25 to 35 years

Education: High school graduate or equivalent, preferably education in merchandising, along with mechanical inclinations.

2. EXTENT OF SUPERVISION RECEIVED: (State name and classification of supervisor(s) — Describe briefly nature of supervision: General, Moderate, Close — also frequency to which work is subject to review and checking and availability of supervisor for consultation and advice)

Close supervision by Branch Manager and Special Merchandising Representative.

Supervisors available at all times for consultation and advice. ← Technical knowledge, etc.

3. EXTENT OF SUPERVISION EXERCISED: (Give positions and number of persons supervised)

Supervises the sales, service and operations of all L.O. stations in territory.

4. RELATIONSHIP TO OTHER POSITIONS:

(a) Positions in line of promotion considered superior to this position:

Territorial Merchandiser

(b) Positions considered comparable to this position:

Line Salesman and Industrial Salesman - Branch

(c) Positions in line of promotion considered inferior to this position:

None

4618

5. WORK PERFORMED: (Set forth accurately and fully the work performed, the limits of responsibility, type of responsibility, types of decisions and recommendations made and give the principal functions of the position. Show approximate percent of time devoted to each of the principal duties)

Functions: Supervision of operations, sales and service, customer development and service station management of all LO units in his territory.

Responsibilities: Responsible for the development of and increased sales through all LO units, by the selection of competent lessees; with proper instruction in Richfield merchandising practice and policy; with proper records necessary to evaluate results. Reports to branch manager.

Duties:

1. Selection and installation of dealers
   a. Know best sources for prospective dealers.
   b. Proper selection of dealers.
   c. Clearly outline advantages of Richfield Franchise to prospective dealer.
   d. Check out present dealer and install new dealer, with proper handling of all items on Form 166.

2. Thoroughly train dealers and their helpers in all phases of Richfield service station procedures.
   a. All sales procedures and service aids.
   b. All maintenance of buildings, lubrications department and restrooms.
   c. Service station management.
   d. Service station market development.
   e. Displays and signs.
   f. Safety methods.
   g. All MD forms except 66 & 110.
   h. TBA sales stories, uses and installations.
   i. Use of Richfield advertising and personal advertising.
   j. Richfield dealer supply department materials.
   k. Credit card procedures and solicitation.
   l. Proper handling of Richfield seasonal campaigns.

3. System of follow-up and checking on dealers' actual performance as a result of training.
   a. As a guide to dealer for improving his operations.
   b. As a record for Merchandiser for a complete record of dealers improvement in operations and in carrying out suggestions.
   c. A record of performance for the Division branch.

4. Maintain all records, reports, requisitions and other forms as required by the company pertaining to all LO service station operations.

5. Conduct or assist in the conducting of dealer meetings.

6. Completely analyze dealers operations and by actually working with him on the station, demonstrate methods of bolstering weak departments, if necessary in uniform.

Compiled by D C Smith Approved by Date 6/1/47

914

[fol. 915] Work Habits—Branch Merchandiser

Daily

(1) Phone into the Branch at 8:00 o'clock in the morning, Monday through Friday. Do not come into the Branch except to handle emergencies or at the request of the Branch Manager. Mail will be sent to the home and it is not necessary to come into the Branch to secure same.

a. Leave with the Chief Clerk or Branch Manager the daily route sheet based upon:

1. One, but not more than two, calls upon LO operators.

2. Apportion time spent with operators on basis of 75% of time being spent on the weakest 25% of the operators.

(2) Call the Branch, in addition to the first morning call, at 11:00 a. m. and 3:00 p. m.

(3) Work with each LO Operator on the day's route sheets, in uniform, by:

a. Make out Form 205 with operator or in the event a Form 205 is not made out the Job Breakdown and Record of Progress should be used as a guide to determine the work to be done.

b. Use the back of triplicate of Form 205 for any special notations to be made on items to be checked at the next call. The Form 205 will be punched on the right of the page and the Merchandiser's copy should be kept in the notebook along with the Form 216.

c. Check operator's understanding of all items marked "unsatisfactory."

d. Demonstrate correct procedure and check operator's performance, making notations on Record of Progress.

e. Before leaving station review all to-be-corrected items and be sure the Operator understands how to correct each one, leaving with him the original copy of the Form 205 as a guide.

f. Check on condition of "A" boards.

g. Maintain a date book and enter in the date book all future appointments or matters scheduled to be handled for that day.

h. Assist operators in the proper methods of hiring, training and supervising their employees and observe the conduct of operator's employees from time to time when the operator is absent from the station.

(4) When necessary to make emergency calls, they should be handled after 3:00 p. m.

Weekly

(1) Report to the Branch Saturday morning at which time all correspondence, reports, and any and all records should be cleaned up for the week.

(2) Also on Saturday morning all matters should be cleaned up with the Branch Manager on any items to be gone over, and plans should be formulated for the coming week.

Monthly

(1) The 200 Report should be prepared in the Branch Office immediately after the 1st of the month.

(2) The first Saturday the Forms 216 must be brought up to date from the information shown on the 200 Report on Forms 1079, The TBA Distributor's Report.

(3) Make calls with the Branch Manager to cover all LO Units.

[fol. 916] When Possible or When Occasion Arises

(1) Interview applicants for LO units who have been screened by the Chief Clerk by definite appointment and arrange for the acceptable applicants to interview the Branch Manager by appointment.

(2) Before checking in the selected operator, a complete understanding should be had with him on the "Richfield Plan for Profit;" all plans, such as hours of operation, maintenance, uniforms and operator meetings.

(3) Install the new operator by being present during the complete transaction.

a. Use Form 146 as a guide to the check-in and check-out covering every item on the Form.

b. The Schedule "A" on Form 542 must be checked as to actual physical inventory and not by merely transfer-ing the information on the old out-going operator's Schedule "A" of Form 542.

c. Spend at least one week, or more if necessary, with the new operator immediately upon his installation.

d. Train the new operator during this period using the Job Breakdown as a guide.

e. Wait until 30 days before making out the first 205 report.

f. Make neighborhood calls with the new operator after the installation when convinced his service is okay. This should be 2 to 4 weeks after installation.

g. Use 3 x 5 cards for list of Credit Card holders in the operator's territory and see that all Credit Card holders are contacted.

h. Use Market Development book.

(4) Analyze station's potential and compare operators performance to that potential.

a. Use Profit Analysis Form to compare present profit based on present gallonage to potential based on present gallonage, making definite plans to increase sales on each low item.

b. Make Service Station Survey, using Service Station Survey Form and develop on Profit Analysis Form the potential gallonage, and make plans to develop the gallonage available but not enjoyed in the territory.

(5) Check opening and closing hours on each station in the territory.

(6) Check night lighting, paying special attention to the wattage of the bulbs and the focus of the lights. If necessary notify the C & M Department to handle cleaning and refocusing.

[fol. 917]

Job Breakdown—Branch Merchandiser

What to Do	How to Do It	When
(a) Selects Operator	(1) Watch for prospects among own helpers;	As needed.
	(2) Keep file on prospects that apply	Continuously.
	(3) Advertise in paper if necessary	Only when necessary.
	(4) Have complete understanding of Company and operator responsibilities.	
	(5) Show benefits of Richfield Franchise.	
(2) Install operator	(1) Handle all items in sequence as outlined on Form 146.	On day of check-in.
(3) Train new operator	(1) Use Job Breakdown & Record of Progress.	Immediately after installation.
	(2) Be in uniform.	
	(3) Explain use of Richfield & personal advertising—seasonal campaigns & give aways.	Stay as long as needed.
(4) Train the older operator.	(1) Fill out Form #205	At least every 60 days.
	(2) Explain and demonstrate how to correct the weaknesses revealed.	
	(3) Keep Record of Progress on each operator.	
(5) Maintain Form #200 & #216 & analyze.	(1) Keep reports accurate and current—note trends shown—note weak operator—analyze causes—develop plan of action.	1st & 5th of following month.
(6) Analyze operators performance on station.	(1) Work with operator—demonstrate correct procedures—use longer periods for training (min. 2 hours) in uniform.	When his operations show a need for improvement.
(7) Maintain all records required by Company pertaining to LO stations operation.	(1) As instructed by Branch Manager.	According to Company policy and procedure.
	(2) Refer to Book "Handling Our Business"	
(8) Report to Branch by phone.	(1) Get any specific instructions for the day.	8:00 a.m.
	(2) Plan day's work.	11:00 a.m.
	(3) Prepare daily route sheets.	3:00 p.m.
	(4) Work on station with operators and helpers to improve service and business.	

[fol. 918]

(9) Check hours of operation of his stations.	(1) Tour his stations for actual check.	(1) As often as needed.
(10) Check Company Advertising.	(1) "A" Boards—special company and product advertising in stations.	Continuously as he visits stations.
(11) Plan and conduct or assist in conducting operator meetings.	(1) Carry out instructions of Branch & Division.	As determined by Company.

(Here follow 2 Photolithographs, side folios 919, 920)

Defendant's Exhibit N-1

ATLANTIC RICHFIELD OIL CORPORATION

PART I
(For General Office Use)

	Exempt ☐
	Subject ☐
	Approval:
	Date:

DEPARTMENT LOCATION Control Schedule

CLASSIFICATION TERRITORIAL MERCHANDISER EFFECTIVE

SALARY RANGE BASIC RATE

PART II
Job Description

1. WHAT ARE NECESSARY QUALIFICATIONS: (State briefly essential experience, training and abilities considered necessary to satisfactory performance)

AGE: 25 to 35 years.

EDUCATION: High school graduate or equivalent, preferable education in merchandising, along with mechanical inclinations.

EXPERIENCE: Should have one year's experience as Branch Merchandiser with the training furnished that position.

2. EXTENT OF SUPERVISION RECEIVED: (State classification of supervisor(s) — Describe briefly nature of supervision: General, Moderate, Close — also frequency with which work is subject to review and checking and availability of supervisor for consultation and advice)

Moderate supervision by Assistant Division Manager - Merchandising and/or Special Merchandising Representative. Supervisor available at all times for consultation and advice.

3. EXTENT OF SUPERVISION EXERCISED: (Give positions and number of persons supervised)

Co-operates with Commission Agents in the handling of 10 dealers along with the development of sales with the dealers in the assigned territory.

4. RELATIONSHIP TO OTHER POSITIONS:

(a) Positions in line of promotion considered superior to this position:

Special Merchandising Representative

(b) Positions considered comparable to this position:

Territorial Salesman

(c) Positions in line of promotion considered inferior to this position:

Branch Merchandiser

5. PRINCIPAL FUNCTION: (State briefly the primary purpose of the job)

Supervision of operations, sales and service, customer development and service station management of all 10 units in his territory, and of Commission Agents as far as 10 operation is concerned.

4688

6. DUTIES AND RESPONSIBILITIES: (Enumerate and describe the principal duties for whose performance the job is responsible. Show the percentage of time devoted to each and the extent of responsibility. Begin each sentence with an action verb.) | Percentage of Time

RESPONSIBILITIES: Responsible for the development of and increased sales through all 10 units, by assisting the Commission Agents in the selection of competent lessees; with proper instruction in Richfield merchandising practice and policy with Commission Agents and dealers; with proper records necessary to evaluate results.

DUTIES:

1. Assist Commission Agents in selection and installation of dealers.
   a. Know best sources for prospective dealers.
   b. Proper selection of dealers.
   c. Clearly outline advantages of Richfield Franchise to prospective dealer.
   d. Check out present dealer and install new dealer, with proper handling of all items on Form 146.
2. Thoroughly train Commission Agents, dealers and their helpers in all phases of Richfield service station procedures.
   a. All sales procedures and service aids.
   b. All maintenance of buildings, lubrication department and restrooms.
   c. Service station management.
   d. Service station market development.
   e. Displays and signs.
   f. Safety methods.
   g. All MD forms except #9 and #10.
   h. TBA sales stories, uses and installations.
   i. Use of Richfield advertising and personal advertising.
   j. Richfield dealer supply department materials.
   k. Credit Card procedures and solicitation.
   l. Proper handling of Richfield Seasonal campaigns.
3. Job Breakdown and Record of Progress, Forms 1071 - 1 to 8, inclusive, for follow-up and checking on dealers' actual performance as a result of training.
   a. As a guide to dealer for improving his operations.
   b. As a record for Territorial Merchandiser for a complete record of dealers' improvement in operations and in carrying out suggestions.
   c. A record of performance for Territorial Merchandisers and for field follow-up.
4. Assist Commission Agent in maintaining all records, reports, requisitions and other forms as required by the company pertaining to all 10 service station operations.

7. SCOPE OF JOB: (Describe additional factors which may be of value in distinguishing the level of the work as to its importance to the organization. Include but do not confine this statement to such things as relative size of the operation, volume and flow of the work, degree of judgment exercised, contacts with other personnel and the public, principal equipment used, and other characteristic job features.)

5. Conduct or assist in the conducting of dealer meetings.

6. Completely analyse dealers' operations and by actually working with them on the station demonstrate methods of bolstering weak departments, if necessary, in uniform. Train Commission Agent in these methods in order that he can follow through on suggestions made to the dealer.

Compiled by _____ Approved by _____ Date _____ 930

[fol. 921] **Work Habits—Territorial Merchandiser**

Daily

(1) Handle any and all emergencies and special assignments first thing in the morning, which may have been given by the Assistant Division Manager of Merchandising or the Special Merchandising Representative. When these have been handled, check with the Commission Agent in whose territory the day's work has been scheduled for that day on the weekly route sheet.

a. If no special assignments, check into the agency first thing in the morning, informing the agent as to the LO units to be worked that day.

b. If, due to geographical difficulties, the agent should be notified by mail or phone as to the LO's and in what sequence they will be worked.

(2) Work with each operator on the route sheet, in uniform by:

a. Start out by making out Form 205 on the operator.

b. Check operator's understanding of all items marked "unsatisfactory".

c. Demonstrate correct procedures and check operator's performance on all unsatisfactory items, correcting those possible, and making notations on the Record of Progress.

d. Before leaving station review all "To be Corrected" items on the Form 205, making sure the operator is in complete understanding as to what should be done, leaving him the original copy of the Form 205 as a guide.

e. Check on the condition of the "A" boards.

f. Keep the Date Book complete on items needing attention at the station. These should be referred to the Special Merchandising Representative or Assistant Division Manager of Merchandising for handling. Also note in the Date Book any special items to be handled on the next call.

Weekly

(1) Make out a route sheet for each day's schedule one week in advance. Mail to Division Office on Saturday to reach the Assistant Division Manager of Merchandising by Monday morning.

a. The daily route sheet should provide for not more than two calls per day on LO operators.

b. Apportion time spent with operators on the basis of 75% to be spent on the weakest 50% of the operators.

(2) New operators should be worked with for at least a day or two immediately following the installation of the operators, and then checked at frequent intervals for the first sixty days.

Monthly

(1) Form 200's should be analyzed on each LO unit.

(2) Form 216 should be completed immediately following the first of the month from the information on the Form 200 and Form 1079 received from TBA distributors.

When Possible or When Occasion Arises

(1) Assist Commission Agent in selection and installation of operators by:

a. Being aware of the best sources for prospective operators.

b. Assisting him in properly selecting the operator.

[fol. 922] c. Clearly outlining the advantages of the Richfield Franchise to prospective operators.

d. Have a complete understanding with all operators as to their responsibilities and in maintaining the property and serving the public.

e. Following Form 146, checking out the present operator and installing the new operator, with the Commission Agent present.

f. Spend at least one or two days or more if necessary with the new operator immediately following his installation.

g. Training the new operator during this period using the Job Breakdown as a guide.

h. Wait 30 days after installation before making out the Form 205 report.

i. Make some neighborhood calls with the new operator as soon after his installation as possible and when convinced that his service is up to standard. This should be from two to four weeks from installation.

(2) Thoroughly train Commission Agents in all phases of Richfield Service Station procedure.

(3) Assist Commission Agent in maintaining all records, reports, requisitions, and other forms as required by the company pertaining to all LO stations in the territory.

(4) Conduct and assist in the conducting of operator meetings as required, and handle meetings covering the Richfield Plan for Profit with new operators when practical.

[fol. 923]

Job Breakdown—Territorial Merchandiser

What to Do	How to Do It	When
(1) Select Operator	(1) Work with Commission Agent to secure and interview prospects. (2) Watch for prospects among own helpers. (3) Keep file on prospects that apply. (4) Advertise in paper if necessary. (5) Have complete understanding of company and operator responsibilities. (6) Show benefits of Richfield Francise	As needed.
(2) Install Operators	(1) Handle all items in sequence as outlined in Form 146. (2) Prepare and execute Form 542, Schedule 306.	
(3) Train new operators	(1) Use Job Breakdown & Record of Progress. (2) Be in uniform (3) Explain use of Richfield and personal advertising—seasonal campaigns—give-aways.	Immediately after installation. Stay as long as needed.
(4) Train the older Operators.	(1) Fill out Form 205. (2) Explain and demonstrate how to correct the weaknesses revealed (in uniform).	Every 60 days. As needed.
(5) Supervise the Operator	(1) Contact him periodically. (2) Use Form 205. (3) Help him to bolster weak points by better merchandising.	On definite schedule.
(6) Maintain and analyze Forms 200 and 216	(1) Keep reports accurate and current—note trends shown—note weak operators—analyze causes—develop plan of action.	1st to 5th of month.

[fol. 924]

(7) Analyze Operators' operations on stations	(1) Work with operator—demonstrate correct procedures—use longer periods for training (minimum: 2 hours at a time). (2) Contact Commission Agent before covering his LO stations.	When his operations show a need for improvement.
(8) Maintain all records required by company pertaining to LO station operation	(1) As instructed by Special Merchandising Representative. (2) Refer to book "Handling our Business."	According to company policy and procedures.
(9) Report to Special Merchandising Representative	(1) Prepare weekly route sheet in advance.	Week in advance.
(10) Check hours of operation of his stations	(1) Tour his stations for actual check.	As often as needed.
(11) Check company advertising	(1) "A" board, special company and product advertising in stations.	Continuously as he visits stations.
(12) Plan and conduct or assist in conducting operator meetings	(1) Carry out instruction of Special Merchandising Representative. (2) Work with Commission Agent.	As determined by company.

(Here follow 2 Photolithographs, side folios 925, 926)

4702A

Defendant's Exhibit N-2

FORM 700

SHFIELD OIL CORPORATION

PART I
(For General Office Use)

	Exempt ☐
	Subject ☐
	Approval;
	Date:

DEPARTMENT LOCATION Control Schedule

CLASSIFICATION SPECIAL MERCHANDISING REPRESENTATIVE EFFECTIVE

SALARY RANGE BASIC RATE

PART II
Job Description

1. WHAT ARE NECESSARY QUALIFICATIONS: (State briefly essential experience, training and abilities considered necessary to satisfactory performance)

Age: 30 to 45 years

Education: High school graduate or equivalent, preferably education in merchandising, along with mechanical inclinations.

Experience: Must have minimum of two years' experience as Branch Merchandiser and Territorial Merchandiser with further merchandising and retail experience of at least five years.

2. EXTENT OF SUPERVISION RECEIVED: (State name and classification of supervisor(s) — Describe briefly nature of supervision: General, Moderate, Close — also frequency to which work is subject to review and checking and availability of supervisor for consultation and advice)

Under the general supervision of the Assistant Division Manager - Merchandising. Supervisor available at all times for consultation and advice.

3. EXTENT OF SUPERVISION EXERCISED: (Give positions and number of persons supervised)

Supervises the activities of all Merchandisers, Commission Agents and City Salesmen in his assigned territory pertaining to the operation of all resale units.

4. RELATIONSHIP TO OTHER POSITIONS:

(a) Positions in line of promotion considered superior to this position:

Branch Manager "A" and Assistant Division Manager - Merchandising

(b) Positions considered comparable to this position:

Branch Manager "B" and Special Representative "B"

(c) Positions in line of promotion considered inferior to this position:

Territorial Merchandiser and Territorial Salesman

925

4728

5. WORK PERFORMED: (Set [illegible]h accurately and fully the work perform[illegible] the limits of responsibility, types of re[illegible]bility, types of decisions and recommend[illegible] made and give the principal function of [illegible] position. Show approximate percent of tin[illegible] devoted to each of the principal duties)

Functions: Supervision of Merchandising activities of all Merchandisers, Commission Agents and City Salesmen in his assigned territory pertaining to the operation of all resale units, under the direction of the Assistant Division Manager of Merchandising, and to be considered as a training ground for candidacy for that position in the event of an opening.

Responsibilities: Metropolitan; development of an increase sales through LO units by use of the Richfield Plan-for-Profits, and prescribed service station procedures in cooperation with Branch Managers and Merchandisers. Outside Territories; same, with Territory Salesmen, Commission Agents, Branch Managers and Territory Merchandisers.

Duties:

1. When assigned to areas outside metropolitan districts, should work with Territory Merchandisers and Commission Agents in selection and training of reliable LO Dealers.

2. Assist in continuance of proper operation of all resale units.

3. With Territory Merchandisers check Commission Agent's TBA stocks and credits to assure adequate supply of all items.

4. Work with Merchandisers on weak LO units, giving suggestions for improvements.

5. Make recommendations for repairs and company maintenance of LO units.

6. Make survey on competitive practices and policies, and keep Assistant Division Manager of Merchandising informed.

7. Assists in the adjustment of complaints which might arise from resale operations.

8. Supervises introduction and carrying out of all advertising and promotional campaigns through resale units.

Supervise avg. 3 Merchandisers in outside territories [illegible] Branch Merch. [illegible] Avg. 2 per man

6 Special Merch. Rep.

Avg 20 stations - 1 [illegible]
100 - 1 [illegible]
200 - 1 [illegible]

Compiled by [illegible] Approved by Date 8/18/41

926

[fol. 927] Work Habits—Special Merchandising Representatives

Daily

1. Check into branch or commission agency the first thing in the morning, checking route sheet of territory merchandiser or branch merchandiser with whom he expects to travel.

2. Go over any special problems with the merchandiser which either he or the merchandiser might have, after meeting merchandiser at specific station.

a) Handle these problems with merchandiser at this time.

3. Check merchandiser's records to determine that they are current and in order—i. e. 200, 216, 1071.

4. Analyze Forms 535-A for policing of company loan exposure.

5. Analyze Forms 205 with merchandiser.

a) Determine whether best use of this form is made.

b) Make physical check of station to determine whether maintenance has improved since preparation of last Form 205.

c) If no improvement evident, determine what steps merchandiser will take to get situation handled.

d) Follow through on this phase of activity at the time of your next meeting with merchandiser.

6. Listen to merchandiser's presentation at each L. O. account on whom he calls with the merchandiser.

a) Demonstrate and offer suggestions for proper presentation to get the job done more efficiently.

7. Observe merchandiser's presentation again on subsequent station calls to determine whether merchandiser's approach has improved.

a) Repeat until merchandiser can handle presentation properly.

8. Check merchandiser's Form 1071 (Dealers' Training Guide) to determine extent of operator's training progress.

a) Observe station operations for evidence of merchandiser's training as per "Dealers' Training Guide" entries.

b) Call to merchandiser's attention all deviations by operator and help at station.

[fol. 928] c) Determine how merchandiser handled operator training.

d) Correct training methods of merchandiser, if warranted.

9. Make observations at station called as to:

a) Uniforms—T. B. A.—petroleum stocks—Richfield approved merchandise for sale to credit card customers—type of help employed by operator—display fixtures—bookkeeping system—dealer supply items—general attitude of operator, etc.

b) Any poor conditions found must be discussed with merchandiser for his immediate action towards correction.

10. At stations called with merchandiser, observe service station equipment presently in use.

a) Is equipment in good working order?

b) Is equipment obsolete, antiquated and does it need replacement?

11. Establish proper method of approach for merchandiser's use to correct equipment condition with operator.

a) Importance to operator in having equipment which is in good operating condition to do a proper job.

b) Attractive equipment builds customer's confidence.

12. Train merchandiser on any phase of operation in which merchandiser is not proficient.

a) Use "Dealers' Training Guide" sheets to accomplish this.

b) Check constantly the progress of merchandiser to determine whether he has benefited from your training.

c) All merchandiser training must be done away from operator's presence to avoid embarrassment.

Weekly

1. Schedule following week's work in advance.

2. Prepare route sheet and mail to Assistant Division Manager—Merchandising, to reach him by Monday morning.

a) Plan to spend as much time as necessary with merchandiser with whom you expect to travel.

b) Notify in advance territory merchandiser or branch manager the time of your arrival, designated meeting place with merchandiser.

[fol. 929] c) In all cases, meet merchandiser at a specific service station.

3. Analyze Form 1335, merchandiser's daily report received from Division office.

a) Making too many calls?

b) 75% of time with weakest stations?

c) Is work planned?

Monthly

1. Analyze performance of the previous month as evidenced by Forms 200—1079—C. C. and T. P. reports.

a) Determine progress made to detect weak territories.

b) Make plans for corrective measures and improvement of sales picture.

2. Discuss weaknesses with merchandisers affected and outline plans for the betterment of the general sales picture.

3. Follow-up on improvement measures adopted.

4. Determine progress made in previous month with respect to:

a) Reducing the number of new stations under 10,000 gallons.

b) Market development program.
c) Re-opening closed stations.
d) Improvement in gallonage; old facilities.

5. Follow through with merchandisers to insure continuous progress.
6. Analyze attainment report as released by Division office (60 days).

a) Discuss individual performance with each merchandiser.
b) Outline plans for improvement.

7. Ride the stations to check operating hours with merchandiser, both in the morning and evening.

a) Check station illumination at the same time.

8. Determine whether outstanding rentals, notes etc. due the company have been collected.

a) Follow through with merchandiser until you know collection has been effected.

[fol. 930] When Necessary or When Occasion Arises

1. Consult with territory merchandiser and/or commission agent on all changes of operators.
2. Assist in interviewing prospective dealers.
3. Supervise activity of commission agents as pertains to L. O. operations.
4. Counsel with merchandisers on preparation of all loan papers.

a) Assist in preparing papers, where necessary.
b) Make certain merchandisers thoroughly familiar with company loan plan.
c) Encourage wider usage of loans—another merchandising tool.

5. Recommend repairs and maintenance of L. O. units.

a) See that necessary forms and requisitions are routed to the Division office.

6. Be prepared to move in and handle any and all difficult or acute situations, as necessary.
7. Check on competitive merchandising practices and policies, prices, etc.

a) Keep Assistant Division Manager—Merchandising constantly advised.

8. Assist merchandiser in the proper handling of complaints.

a) Collect all facts.
b) Do not obligate company.
c) Handle promptly on ground if possible, otherwise to Division.

9. Analyze all Forms 205 sent him by Division office.

a) Immediate follow-up should be made with merchandisers on those which are exceptionally bad.
b) A report should be made on what was done to correct situation—sent to Assistant Division Manager —Merchandising.

10. Assist in planning, scheduling and conducting dealer meetings.
11. Plan and hold merchandising meeting with merchandisers under his supervision every 60 days.

a) Plan in advance; proceed as per plan, and follow up material presented in field.

[fol. 931] Necessary Records

1. Form 1093 "Merchandising Field Follow-Up". Prepare Form 1093 on each merchandiser every 60 days.

a) Constitutes a guide for merchandiser to follow in the performance of his every day work habits.
b) Merchandiser will know what is expected of him.
c) Enables you to detect weaknesses on the part of the merchandiser and evaluate his effectiveness.
d) Another opportunity for you to offer constructive suggestions to increase merchandiser's over-all efficiency and performance.

2. Form 1081 "Record of Progress". Maintains—uses for merchandiser follow-up.

3. Form 1071. Uses for merchandiser training.

4. Maintains accumulative sales figures of territories as obtained from Forms 200, 1079.

5. Maintain cost per gallon on each merchandiser and on territory as a whole. (Furnished by Division monthly).

6. Maintains credit card, time payment statistics for each branch and agency point.

(Here follow 2 Photolithographs, side folios 932, 933)

Defendant's Exhibit N-3

ATLANTIC-RICHFIELD OIL CORPORATION

PART I
(For General Office Use)

LINE SALESMAN - BRANCH

Exempt ☐
Subject ☐
Approval:
Date:

DEPARTMENT Mktg. So. Div. LOCATION Control Schedule
CLASSIFICATION Line Salesman - Branch EFFECTIVE
SALARY RANGE BASIC RATE

PART II
Job Description

1. WHAT ARE NECESSARY QUALIFICATIONS: (State briefly essential experience, training and abilities considered necessary to satisfactory performance)

High School education or equivalent and a reasonable amount of sales experience or knowledge of sales work. Be affable, agreeable and be able to contact and deal with the public.

2. EXTENT OF SUPERVISION RECEIVED: (State name and classification of supervisor(s) — Describe briefly nature of supervision: General, Moderate, Close — also frequency to which work is subject to review and checking and availability of supervisor for consultation and advice)

Works directly for Branch Manager who exercises moderate to general supervision. Work is subject to review and checking by supervisors who are readily available for consultation by telephone or in the field and office.

3. EXTENT OF SUPERVISION EXERCISED: (Give positions and number of persons supervised)

Does not exercise supervision over anyone.

4. RELATIONSHIP TO OTHER POSITIONS:

(a) Positions in line of promotion considered superior to this position:

Territorial Salesman

(b) Positions considered comparable to this position:

Branch Merchandiser

(c) Positions in line of promotion considered inferior to this position:

Tank Truck Salesman

4781

5. WORK PERFORMED: (Set forth accurately and fully the work performed, the limits of responsibility, types of decisions and recommendations made and give the principal functions of this position. Show approximate percent of time devoted to each of the principal duties.)

PRINCIPAL FUNCTION:

Promotion of sales, solicitation of new business and renewing of existing accounts.

RESPONSIBILITIES:

1. Secures renewal of existing contracts.
2. Solicit new resale business and other type accounts.
3. Secure bid proposal on municipal, city and county requirements of petroleum products.
4. Attend such bid openings.
5. Promote the sale of TBA merchandise.
6. Secure full cooperation of all accounts in matters pertaining to company policies and instructions.

DUTIES:

1. Solicit new resale accounts, retain and renew existing contracts with such accounts. Sales Contract Form 337; Painting Agreement Form 59; Equipment Loan Agreement Form 825 - 40%
2. Secure new commercial accounts, retain and renew such existing accounts all covered by Form 735 Consumer Gasoline Contract - 20%.
3. Secure new industrial accounts, retain and renew such existing accounts covered by Form 432 Lubricating Oil Agreement - 15%.
4. Collection of accounts receivable, credit card charges - 10%.
5. Contact and adjust or recommend for adjustment all complaints - 5%
6. Attend all bid openings of city, county and municipal and prepare Form 474 Report on Bids - 2%.
7. Secure cooperation of all types accounts in handling advertising matters and displays - 3%
8. Secure orders for the sale of TBA merchandise and accessories - 3%
9. Attend Branch meetings and cooperate with Branch Manager in promotion of sales programs, contests, etc. - 2%.

Compiled by | Approved by | Date

933

[fol. 934] Work Habits—Branch Salesman

Daily

(1) Report to the Branch by telephone every morning by 8:00 a. m. except when it is necessary to come to the Branch, either at the request of the Branch Manager, or when a meeting is scheduled.

(2) Leave the daily route sheet with the Branch Manager or Chief Clerk first thing in the morning. It should be made up by:

a. Breaking down the territory into work days on a geographical basis.

b. Keep a date book and check calls which have been previously set up for that day.

c. Spend about 75% of the time on commercial accounts which should include a minimum of two prospects per day.

d. Spend the remaining 25% on independent Richfield dealers and prospective Richfield dealers being sure that each Richfield dealer is contacted at least once a week.

(3) In addition to the first call to the Branch in the morning, call in at 11:00 a. m. and 3:00 p. m.

(4) Make up Form 167-A on all prospects and customers, keeping up to date with all changes, expansions, personnel and additional products.

(5) In making calls, before contacting each account, check with Form 167-A on that account.

(6) Concentrate on the full line of products which can be used by each and every account and solicit credit card applications.

(7) Immediately after each call make all necessary notations on the Form 167-A and in addition, fill in the Salesman's Report Form 647 on that call so that the 647 will be completed at the end of the day.

(8) In the event of any variation in the daily route sheet, the Branch Chief Clerk should be notified.

(9) Give Independent dealers all merchandising help they will absorb and in training their helpers, make sugges-

tions to those dealers for ways to improve their business and increase sales. Always concentrate on the advantages of carrying the complete Richfield line. Also attempt to make neighborhood development calls with these dealers.

Weekly

(1) Attend meeting with the Branch Manager.

(2) Report to the Branch on Saturday morning, cleaning up all of the week's business and handling the mail and any other items requiring attention.

[fol. 935]

Job Breakdown—Branch Salesmen

What to Do	How to Do It	When
(1) Solicit independent dealers in his territory.	(1) Keep 167 file current on all independent dealers in his territory.	Continuously.
	(2) Present advantages and benefits of a Richfield Franchise. Use brochure, "Richfield Franchise".	Keep trying.
	(3) "Get a foot in the door" by selling competitor a partial line of products.	At every opportunity.
(2) Give merchandising assistance to independent dealers	(1) Train dealer and helpers.	On regularly scheduled service calls.
	(2) Offer assistance to any or all phases of Richfield's Plan-for-Profits.	
	(3) Advertising & give-away assistance.	
	(4) Assistance with displays.	
	(5) Give credit information and credit card set-up.	
(3) Collect information regarding real estate for purchase or lease.	(1) Contact property owners, present leases, assemble information in writing turn over to Branch Manager or Real Estate Representative.	Continuously.
(4) Handle 3-C deals	(1) Get all data—complete forms—submit for approvals.	Be alert at all times to secure these leases.
(5) Solicit industrial, farm & ranch and commercial accounts.	(1) Use Form 167A on all accounts. Post daily from Form 647. Keep Form 647 daily.	Regular consistent calls on prospects and present customers.
	(2) Work with Industrial Salesman where he can help.	
(6) a. Administer Richfield's Credit Policies pertaining to all types of accounts.	(1) Fill out proper form.	At time sale is made.
b. Solicit Credit Card Customers.	(2) Forms 1101X for $75.00. Form 1101 for extension for independent dealers.	
(7) Keep posted on activities of competitors.	(1) Note changes in prices, products and policies.	Continuously.
(8) Handle all complaints.	(1) Keep informed on Richfield policies pertaining to handling of complaints—get all the facts. Make no promises. Don't obligate Company. Channel information to proper superior and follow through on results.	Promptly when complaint arises.
(9) Place the Corporation on the bidding list on Government business.	(1) Keep informed on bid letting dates.	Meet the time limits prescribed.
	(2) Consult with Branch Manager for help.	

[fol. 936] Work Habits—Baanch Salesman—2

Monthly

(1) Make out Form 200 on independent dealers and analyze—point out loss of profits.
(2) Post 167-A and analyze—anticipate future business.

When possible or when occasion arises

(1) Always be on the alert for any anticipated lease expiration or new locations available and immediately report same to Branch Manager.
(2) Make collections near the end of the month and check up on bad checks and poor credits.
(3) Contract expirations on all kinds of accounts both Richfield and competitive.
(4) Competitive practices.
(5) Place Corporation on bidding lists.
(6) Handle 3-C deals.

(Here follow 2 Photolithographs, side folios 937, 938)

Defendant's Exhibit N-4

FORM 700

RICHFIELD OIL CORPORATION

PART I
(For General Office Use)

	Exempt ☐
	Subject ☐
	Approval:
	Date:

DEPARTMENT LOCATION Control Schedule

CLASSIFICATION TERRITORIAL SALESMAN EFFECTIVE

SALARY RANGE BASIC RATE

PART II
Job Description

1. WHAT ARE NECESSARY QUALIFICATIONS: (State briefly essential experience, training and abilities considered necessary to satisfactory performance)

Age: 30 to 40 years

Education: High school graduate or equivalent, preferably education in marketing, along with mechanical inclinations.

Experience: Should have experience in handling people and the ability to assign work to the men under his supervision. Should have at least one year's experience as a Branch Salesman or one year as a Branch Salesman and Branch Merchandiser.

2. EXTENT OF SUPERVISION RECEIVED: (State name and classification of supervisor(s) — Describe briefly nature of supervision: General, Moderate, Close — also frequency to which work is subject to review and checking and availability of supervisor for consultation and advice)

Under the moderate supervision of the Assistant Division Manager - Operations and Special Representative. Supervisors available at all times for consultation and advice.

3. EXTENT OF SUPERVISION EXERCISED: (Give positions and number of persons supervised)

Supervises sales effort and operations of Commission Agents in territory.

4. RELATIONSHIP TO OTHER POSITIONS:

(a) Positions in line of promotion considered superior to this position:

Branch Manager, Special Representative and Special Merchandising Representative

(b) Positions considered comparable to this position:

Territorial Industrial Salesman and Territorial Merchandiser

(c) Positions in line of promotion considered inferior to this position:

Merchandiser and Line Salesman

4821B

5. WORK PERFORMED: (Set forth accurately and fully the work performed, the limits of responsibility, types of responsibility, types of decisions and recommendations made and give the principal functions of his position. Show approximate percent of time devoted to each of the principal duties)

Functions: To supervise the sales efforts and operations of the Commission Agents in his assigned territory, acting as direct representative of the Assistant Division Manager in charge of Operations.

Responsibility: Instruct and supervise the Commission Agents as to their duties and functions, with the proper handling of all company business and general appearance of all company property. Personally, and with the agent, assist in the overall promotion of sales to all types of accounts, securing all new leases and real estate.

Duties:

1. Recommends to the Assistant Division Manager and Special Representatives changes in Commission Agents and assists the District Agent and Special Representatives in making agency changes.
2. Properly trains and instructs all new agents in all sales promotion and plant operation, based on the booklet, "Richfield Responsibilities."
3. Contacts existing and prospective accounts, with or without, the Agent to increase present sales or secure new business on resale accounts, commercial accounts, industrial accounts, and farm and ranch accounts.
4. Handles the negotiation and completion of all sales contracts where they are required.
5. Analyzes sales results with the agent and assists in the development of further sales with the view of meeting established quotas.
6. Assists the agent in routing his drivers, organizing his warehousing and stock control in relation to the business done or to be anticipated.
7. Supervises all credit, accounting and traffic matters for each agency, and checks all credits and accounts receivable, credit card charges, delinquent rentals, and any other matters pertaining to credit, accounting and traffic department problems.
8. Develops new proposals, with sketches and necessary information, on new resale locations for either leasing or purchasing, either personally or under the supervision of a real Estate man.
9. Maintains and keeps current forms 167a on Commercial and retail accounts (except LO) in all territories, and supervises the Commission Agent in maintaining his Form 167.
10. Keeps the corporation posted on all county, city, government and municipal bid requirements, and follows up on all bids submitted.
11. Supervises the posting of necessary sales records covering all agency operations on all types of accounts and analyzes these records for the purpose of improving the operation.
12. Prepares and submits Form 647 on all calls, sales, collections and other information pertaining to his daily activities.
13. Analyzes market operating costs per gallon for each Agent, and offers suggestions to improve the Agent's position.

Compiled by _____ Approved by _____ Date _____

[fol. 939] Work Habits—Territory Salesman

Daily

1. Handle any specific assignments given by the Assistant Division Manager of Operations or the Special Representative first thing in the morning, and then check into the agency scheduled for that day on the weekly route sheet. If no special assignments, check into the agency first thing in the morning.

a. Discuss sales performance versus quotas as of that date.

b. Formulate plans from the results as of that date towards making quotas on all products for the balance of the month.

2. Discuss, review and handle with the agent all division office correspondence pertaining to the agency.

3. Check bulk plant facilities and automotive equipment for cleanliness and maintenance.

a. Any company responsibility should be requisitioned or memoed to the Assistant Division Manager of Operations for handling with the C & M Department.

b. All items which are the Agent's responsibility should be noted and instructions should be left with the agent for proper handling.

4. Plan the days calls making a route sheet and adhering to same.

a. Make sales contacts primarily on prospects where the agent needs assistance or where complaints have been registered.

b. Real Estate or lease contacts.

c. Checking on bids on Government, State or Municipal agencies.

5. Do not leave agency until all important or pressing business has been completed.

a. Leave agent instructions for following through on all contacts made.

b. Review with agent all matters to be handled for the next call.

c. Enter all information gathered on forms 167 and 167A.

6. Prepare form 647 on days work.

Weekly

1. Make out weekly route sheet Saturday covering calls for the coming week mailing a copy to the division office so that it will reach there in the first mail Monday.

a. Arrange your route to spend more time at new agencies or weak agencies.

b. Two days should be spent in each territory except in case of emergency.

2. Advise agent in advance by phone or mail the date of arrival and the amount of time to be spent as is covered on the route sheet.

3. Keep and post all necessary sales records such as 216, 77, 200 and 89 reports.

Monthly

1. Analyze market operating costs.

2. Check performance against quotas for the past month and determine reasons for failing to meet quotas.

3. Analyze quotas for the coming month and make plans for meeting these quotas.

When Possible or When Occasion Arises

1. Recommends agency changes to Special Representative.

a. Have all facts in the case.

b. Secure or assist in securing a new agent.

2. Assist Special Representative and District Agent in making agency changes.

a. Arrange for Home Office Accounting Department Representative to be present.

b. Both previous to and on date of change.

3. Trains and instructs new agent in sales promotion and plant operation immediately following installation.

[fol. 940] a. Use booklet "Agent's Responsibilities" as a guide.

b. Be sure agency has a copy of booklet and check each item in the back of the book.

4. Handle all complaints immediately working with agent to determine facts in case.

5. Handles negotiation and completion of all sales contracts.

a. Handles existing contracts well in advance of expiration date.

b. Promptly prepares new contracts.

6. Reports all Government and Municipal requirements.

a. Relays information to Special Representative and division office.

b. Follows up on all bids submitted.

7. Checks on all expiring leases with Richfield or competitor well in advance of expiration date.

[fol. 941]

Job Breakdown—Territorial Salesman

What to Do	How to Do It	When
(1) Recommends Agency changes to Special Representative	(1) Have all facts in the case—discuss with Special Representative or Assistant Division Manager of Operations. (2) Secures or assists in securing new Agent.	When conditions in an agency indicate a change is necessary.
(2) Assists Special Representative and District Agent in making agency changes.	(1) Arranges for HO accounting Department representative to be present on day of check-out.	Both previous to and on day of change.
(3) Trains & instructs new agents in sales promotion and plant operations.	(1) Uses booklet "Agents Responsibilities" as guide. Sees that agent has copy. Gives him information on products, sales promotion ideas, and bulk plant operations.	Immediately following installation, and follows up.
(4) Solicits new business.	(1) Works with agent, but may contact accounts alone. (2) Uses good sales technique. (3) Base on a planned program to systematically canvass the entire territory.	Systematically week by week.
(5) Contacts existing accounts in handling complaints.	(1) Works with agent—determines facts in case. Handles as facts indicate. Sells the Company solidly with the Account.	Promptly, as complaints and conditions arise.
(6) Handles negotiation and completion of all sales contracts where required.	(1) Handles existing accounts well in advance of expiration date. (2) Handles new accounts contracts promptly. (3) Points out advantages of sales contract.	Promptly as needed and follows through.
(7) Analyzes sales results with agents.	(1) Uses Forms 77 and 89 and daily cumulative sales report. (2) Plans sales efforts on products and accounts as needed.	Weekly.
(8) Assists Agent in Bulk Plant Operation.	(1) Helps him route drivers, organize stock control and warehousing—maintenance and safety measure.	As needed.
(9) Supervises accounting procedures.	(1) Checks and instructs on credit policies, use of forms, credit card charges, delinquent rentals, accounts receivable and traffic problems.	Approximately each week.

[fol. 942]

What to Do	How to Do It	When
(10) Develops new resale outlets.	(1) Contacts owners, makes sketches and gets all data on locations for leasing or purchasing.	Always alert and encourages the agent to dig up prospects.
	(2) Works with Agent and Real Estate Representative.	
(11) Maintains Form 167-A.	(1) On his important accounts only.	Currently.
	(2) Helps agents maintain their 167's.	
(12) Reports all governmental and municipal bid requirements.	(1) Relays information to Special Representative.	Currently.
	(2) Follows up on all bids submitted.	
(13) Keeps and posts all necessary sales records.	(1) #167, #216, #77 report, #200 report on independent dealers, 89.	Weekly.
(14) Prepares daily Sales Report.	(1) Completes Form 647.	Daily.
	(2) Prepares Daily route sheet.	
(15) Analyzes market operating costs.	(1) Figures Cost per gallon.	Monthly.
	(2) Suggests ways and means to improve the Agent's position.	

(Here follow 4 Photolithographs, side folios 943, 944, 945, 946)

Defendent's Exhibit O

Rev. 1-1-51

CHART OF AUTHORIZED SIGNATURES

RICHFIELD OIL CORPORATION - MARKETING DEPARTMENT

ITEM	SYMBOL INDICATING INDIVIDUAL AUTHORIZED TO APPROVE
A. ADJUSTMENTS AND ALLOWANCES	
(1) Misc. (Excl. Price Adjustments) $10.00 or less	1-2-3-4-20-21
(2) Misc. (Excl. Price Adjustments) Over $10.00	1-2-3-4
(3) Stock Losses (Incl. Audit Shortages)	1-2-3-4-20
(4) Company Use Merchandise	1-2-3-4-20-21
(5) Accounts Receivable - Iron Barrels (Division Manager or Authorized Nominee - Not in Excess of $500.00)	1-2-3-4-20-21
B. AUTHORIZATION FOR EXPENDITURE (FORM 206)	
(1) Repair and Maintenance Expenditures over $500.00	1-2-3-4-5
(2) Capital Expenditures	1
C. BILLS PAYABLE	
(1) Expense Items Not in Excess of $500.00 and all Utility, Postage and Painting Bills	1-2-3-4-5-20-21
(2) Expense Items in Excess of $500.00 (Excl. all Utility, Postage and Painting Bills)	1-2-3-4-5
(3) Vendors' Invoices for Outside Purchase Mdse. Stock	1-2-3-4-20-21
(4) Petty Cash Reimbursements	1-2-3-4-5-20-21
(5) Authorization - Car Allowance	1-2-3-4-5-20-21
(6) Advertising Agency - Client's Order	1-3-4
(7) Freight and Transportation Expense (W. O. Harry or Authorized Nominee)	1-2-3-4-5-12
(8) Expense Items - Garages - 24th St. and Washington & Alameda (E. F. Rogers or Authorized Nominee as established by policy)	1-2-3-4-5-15
D. CAPITAL ASSETS	
(1) Abandonment or Sale of Capital Assets	1-2-3-4-5
E. PRICES AND PRICE ADJUSTMENTS	
(1) Light Oils (Gasoline, Kerosene, Etc.)	1-3-4-6
(2) Lubricating Oils, Greases, and Specialty Products	1-3-4-6-13
(3) Tires, Batteries, Accessories (*)	1-3-4-11
(4) Road Oils and Asphalts (Prices and Commissions) (*)	1-3-4-6-10
(5) Fuel Oils	1-3-4-6
(6) Liquefied Petroleum Gases	1-6-16
(7) Export Sales (All Products) (*)	1-3-4-6-8
F. REQUISITIONS	
(1) Requisitions for Materials & Supplies from Stores	1-2-3-4-5-6-7-20-21
(2) Requisitions for Purchase of Supplies, Materials, Equipment, Services, Etc. (Division Manager or Authorized Nominee as established by policy)	1-2-3-4-5-6-7 20-21
G. SAMPLES, DONATIONS AND MEMBERSHIPS	
(1) Samples	1-2-3-4-20-21
(2) Donations (Incl. Prizes)	1-2-3-4
(3) Memberships & Subscriptions	1

CHART OF AUTHORIZED SIGNATURES - continued

	ITEM	SYMBOL INDICATING INDIVIDUAL AUTHORIZED TO APPROVE
H.	LEASES, CONTRACTS AND AGREEMENTS	
(1)	Commission Agency Agreement (Form 537) (**)	1-2-3-4-7-20-21
(2)	Commission Tank Truck Agent's Agreement (Form 538) (**)	1-2-3-4-7-20-21
(3)	Conditional Sales Contract (Form 456) (**)	1-2-3-4-6-7-20-21
(4)	Equipment Loan Agreement (Form 825) (**)	1-2-3-4-6-7-20-21
(5)	Lease (Form 175) (Recording Lease)	1-2-3-4-9
(6)	Lease (Form 486) (Lessor Built)	1-2-3-4-9
(7)	Lease (Form 486-A) (Existing Unit)	1-2-3-4-9
(8)	Service Station Lease (Form 542) (**)	1-2-3-4-20-21
(9)	3-C Service Station Lease (Form 362)	1-2-3-4-9
(10)	3-C Operator's Lease (Form 668)	1-2-3-4-9
(11)	3-C Operator's Sales Contract (Form 783)	1-2-3-4-9
(12)	Abatement or Cancellation of Rent (**)	1-2-3-4-20-21
(13)	Bulk Plant Lease (Incl. Form 536)	1-2-3-4-9
(14)	Tenancy Agreement (Form 277) (**)	1-2-3-4-9-20-21
(15)	Tenancy Agreement for Billboard Use (**)	1-2-3-4-9-20-21
(16)	Termination Letter (Form 383) (**)	1-2-3-4-20-21
(17)	Termination Agreement (Form 306) (**)	1-2-3-4-6-7-9-20-21
(18)	Sales Contract (Form 337) (Dealer Accounts) (**)	1-2-3-4-6-7-20-21
(19)	Consumer Gasoline Contract (Tank Wagon) (Form 735) (**)	1-2-3-4-6-7-20-21
(20)	Extra Margin Letter Agreement (**)	1-2-3-4-6-7-9-20-21
(21)	Truck Service Station Lease (Form 1095) (**)	1-2-3-4-20-21
(22)	Consumer Fuel Oil Agreement - Tank Car or Truck and Trailer (Form 525) (**)	1-2-3-4-6
(23)	Consumer Fuel Oil Contract (Pipe Line at Dock) (Form 607) (**)	1-2-3-4-6-20-21
(24)	Distributor Fuel Oil Agreement (Form 407)	1-2-3-4-6
(25)	Distributor Agreement (Form R-407) (**)	1-2-3-4-14
(26)	Distributor Agreement (Typed)	1-2-3-4-6
(27)	Sales Agreement - Oils and Greases (Form 432) (**)	1-2-3-4-13
(28)	Assignment of Sales Contract (**)	1-2-3-4-6-7-20-21
(29)	Painting Agreement (Form 59) (**)	1-2-3-4-6-7-20-21
(30)	Agreement of Guaranty (Form 144) (**)	1-2-3-4-7-20-21
(31)	Transportation Agreements	1-2-3-4-5
(32)	Advertising Lease	1-2-3-4-9
(33)	Sublease (Form 1206) (**)	1-2-3-4-14
(34)	Marine Service Station Sales Agreement (Typed)	1-2-3-4-6-7
(35)	Bid Contract - Gasoline (Form 218)	1-2-3-4-6
(36)	Bid Contract - Stove Oil, Diesel Fuel (Form 219)	1-2-3-4-6
I.	PAYROLL DOCUMENTS	
(1)	Increase in Personnel or Payroll Expense -(Extra Labor - 10 Days Only)	1-2-3-4-5-20-21
(2)	Increase in Personnel or Payroll Expense - (Temporary)	1-2-3-4-5
(3)	Increase in Personnel or Payroll Expense - (Permanent)	1
(4)	Personnel Replacement - No Increase in Personnel or Salary	1-2-3-4-5
(5)	Salary Increases	1
(6)	Changes in Position	1-2-3-4-20-21
(7)	Removal from Payroll	1-2-3-4-5-20-21
(8)	Semi-Monthly Payrolls	1-2-3-4-5-20-21
(9)	Weekly Time Report - Where Overtime Payments are Due (Form 921)	1-2-3-4-5-20-21
(10)	Contract of Employment (Form 904)	1-2-3-4-5-20-21

ART OF AUTHORIZED SIGNATURES - continued

NAME AND IDENTIFYING SYMBOL FOR EACH INDIVIDUAL AUTHORIZED

HOME OFFICE

1 - W. G. King, Jr.
2 - A. G. Mayfield
3 - H. T. Hutchinson
4 - O. I. Nelson
5 - P. L. Wild
6 - G. S. Mason
7 - E. W. Semple
8 - B. D. Blanchard
9 - H. J. Brower
10 - J. R. Keane
11 - G. F. Miller
12 - W. C. Harry
13 - F. H. Quicke
14 - J. W. Quigg
15 - B. E. Rogers
16 - H. W. Vossler

DIVISION OFFICE

20 - Division Manager
21 - Division Office Chief Clerk

(*) Approval of 1, 3 or 4 required:

(a) If price adjustment affects products covered by an existing agreement.

(b) If price schedules cover T.B.A. merchandise furnished by new supplier.

(c) If special price concession allowed on T.B.A. merchandise.

(**) Approval of 1, 2, 3 or 4 required:

(a) When the agreement contains unauthorized alterations or insertions in conflict with the printed provisions of the form or in violation of established company policy.

(b) When subleases for service stations provide for rental not in conformance with existing policy.

(c) When commission rates under Form 537 and Form 538 represent a new or original commission rate for an agency or tank truck agent's territory, and when commission rates under either of these forms represent an increase over rates established in the preceding agreement.

APPROVED:

W. G. King, Jr.

945

Defendant's Exhibit O-1

CHART OF AUTHORIZED SIGNATURES
ALCHEMIAN OIL CORPORATION - - DISTRIBUTING DEPARTMENT
EFFECTIVE JUNE 1, 1941

Item	Symbol Indicating Individual Authorized to Approve
1 - ADJUSTMENTS AND ALLOWANCES	
(a) Accts. (Excl. Price Concessions) $10.00 or less	1-1-4-20-21
(b) Accts. (Excl. Price Concessions) Over $10.00	1-1-4
(c) Price Concessions (Light Oils)	1-1-4-7
(d) Price Concessions (Fuel Oils)	1-1-4-7
(e) Price Concessions (Lube Oils and Greases)	1-1-4-4
(f) Price Concessions (Tires, Batteries, Accessories, Etc.)	1-2-1-4
(g) Sundry Losses (Excl. Theft) (Shortages)	1-1-4-20
(h) Customer Use Merchandise	1-1-4-20-21
(i) Abandonment of Capital Assets	1-1-4
2 - AUTHORIZATION FOR EXPENDITURES (FORM 304)	
(a) Repair and Maintenance Expenditures over $100.00	1-1-4
(b) Capital Expenditures	1
3 - BANKING	
(a) Recommendation for Establishment of Depository Bank	1-2-1-4-20
(b) Recommendation for Change of Depository Bank	1-2-1-4-20
4 - BILLS PAYABLE	
(a) Expense Items Not in Excess of $300.00 and all Utility & Postage Bills	1-1-4-20-21
(b) Expense Items in Excess of $300.00 (Excl. all Utility & Postage Bills)	1-1-4
(c) Vouchers Covering for Outside Purchase Disc Stock	1-1-4-20-21
(d) Petty Cash Reimbursements	1-1-4-20-21
(e) Refunds (Excl. Price Concessions)	1-1-4-20-21
(f) Authorization - Car Allowance (T.O. Employees)	1-1-4
(g) Authorization - Car Allowance (Div. Employees)	1-1-4-20-21
(h) Personal Expense Reports - (T.O. Employees)	1-1-4
(i) Personal Expense Reports - (Div. Employees)	1-1-4-20-21
5 - LEASES, CONTRACTS AND AGREEMENTS	
(a) Commission Agency Agreement (Form 537) (o)	1-2-1-4-20-21
(b) Commission Agency Agreement (Form 537-W)-(State of Washington) (o)	1-2-1-4-20-21
(c) Commission Tank Truck Salesman's Agreement (Form 538) (o)	1-2-1-4-20-21
(d) Conditional Sales Contract (Form 436) (o)	1-2-1-4-20-21
(e) Equipment Loan Agreement (Form 625) (o)	1-2-1-4-20-21
(f) Service Station Lease (Form 479) (Recording Lease)	1-2-1-4
(g) Service Station Lease (Form 480) (Lessor Built)	1-2-1-4
(h) Service Station Lease (Form 480-A) (Existing Unit)	1-2-1-4
(i) Service Station Sublease (Form 482) (o)	1-2-1-4-20-21
(j) Service Station Lease (Form 480-1/4) (Underlying Lease - 2-8 Deals)	1-2-1-4
(k) Sublease - 2B (Form 484)	1-2-1-4
(l) Assignment of Lease (Form 483) (2-8 Deals)	1-2-1-4
(m) Abatement or Cancellation of Rent	1-2-1-4
(n) Fuel Plant Lease (Excl. Form 536)	1-2-1-4
(o) Tenancy Agreement (Form 277) (o)	1-2-1-4-20-21
(p) Termination Letter (Form 348) (o)	1-2-1-4-20-21
(q) Termination Agreement (Form 906) (o)	1-2-1-4-20-21
(r) Sales Contract (Form 398)	1-2-1-4
(s) Sales Contract (Form 397) (Dealer Accounts) (o)	1-2-1-4-20-21
(t) Consumer Gasoline Contract (Tank Wagon) (Form 735) (o)	1-2-1-4-7-20-21
(u) Construction Contractors Gasoline Agreement (Form 671)	1-2-1-4-7
(v) Gasoline Quotation to Construction Contractors (Form 672)	1-2-1-4-7
(w) Consumer Fuel Oil Agreement - Tank Wagon (Form 276) (o)	1-2-1-4-7-20-21
(x) Consumer Fuel Oil Agreement - Tank Car or Truck & Trailer (Form 535)	1-2-1-4-7
(y) Consumer Fuel Oil Contract (Price Line at Dock) (Form 677) (o)	1-2-1-4-7-20-21
(z) Distributor Fuel Oil Agreement (Form 497)	1-2-1-4
(aa) Sales Agreement - Oils and Greases (Form 432)	1-2-1-4-4
(bb) Assignment of Sales Contract (o)	1-2-1-4-7-20-21
(cc) Painting Agreement (Form 59) (o)	1-2-1-4-20-21
(dd) Commission Accounts Painting Guaranty (Form 144) (o)	1-2-1-4-20-21
(ee) Transportation Agreements and Related Cancellation Forms	1-2-1-4-10
(ff) Marine Service Station Sales Contract (Form 818)	1-2-1-4-7
(gg) Change of Equipment (Form 836) (o)	1-2-1-4-20-21
6 - PAYROLL INCREASES	
(a) Increase in Personnel or Payroll Expense - (Extra Labor - 10 Days Only)	1-1-4-20-21
(b) Increase in Personnel or Payroll Expense - (Temporary)	1-4
(c) Increase in Personnel or Payroll Expense - (Permanent)	1
(d) Personnel Replacements - No Increase in Personnel or Salary	1-1-4
(e) Salary Increases	1
(f) Changes in Position	1-1-4-20-21
(g) Removal from Payroll	1-1-4-20-21
(h) Division Semi-Monthly Payrolls	1-1-4-20-21
(i) Home Office Semi-Monthly Payrolls	1-1-4
(j) Weekly Wage Report - Where Overtime Payments are Due (Form 921)	1-1-4-20-21
(k) Contract of Employment (Form 906)	1-1-4-20-21
7 - PRICE AUTHORIZATION (DOMESTIC SALES)	
(a) Light Oils (Gasoline, Kerosene, Etc.)	1-1-4-7
(b) Lubricating Oils and Greases	1-1-4-4-7
(c) Tires, Batteries, Accessories, Etc.	1-2-1-4
(d) Road Oils and Asphalts (Prices and Commissions)	1-1-4-7-4
(e) Fuel Oils	1-1-4-7
8 - PRICE AUTHORIZATION (EXPORT SALES)	
(a) Prices for Export Sales (All Products)	1-1-4-8
9 - RENTAL AND CONTRACT BILLS	
(a) Rental Contract Payments	1-1-4-20-21
(b) Commission Contract Payments	1-1-4-20-21
10 - REQUISITIONS	
(a) Requisitions for Materials & Supplies from Stores (oo)	1-1-4-11
(b) Requisitions for Purchase of Supplies for Stores	1-1-4
11 - SAMPLES, DONATIONS AND MEMBERSHIPS	
(a) Samples	1-1-4-20-21
(b) Donations - (Excl. Prices)	1-1-4
(c) Memberships & Subscriptions	1

Name and Identifying Symbol For Each Individual Authorized

HOME OFFICE

1 - W. T. Dinkins
2 - G. C. Noble
3 - A. G. Mayfield
4 - P. L. Wild
5 -
6 - G. French
7 - E. C. Winder
8 - J. R. Keene
9 - B. D. Blanchard
10 - W. O. Harry
11 - F. H. Podmore

DIVISION MANAGERS

20 - W. G. King, Jr. (Southern Div.)
20 - A. C. Carr (Central Div.)
20 - E. Kirby (Northern Div.)

DIVISION OFFICE CHIEF CLERKS

21 - A. W. Summerfield (Southern Div.)
21 - C. K. Moses (Northern Div.)
21 - P. S. Payne (Central Div.)

(o) Home Office Approval Required:

(a) When alterations, additions or deletions on the form are in conflict with the printed provisions of the form or in violation of established company policy.

(b) When subleases for service stations provide for rental of less than 1¢ per gallon.

(c) When commission rates under Form 537 and Form 538 represent a new or original commission rate for an agency or tank truck salesman's territory, and when commission rates under either of these forms represent an increase over rates established in the preceding agreement.

(oo) In the Northern Division approval of the Division Manager, or his nominee, will be accepted in lieu of F. H. Podmore, or his nominee.

APPROVED W. T. Dinkins

4889

POOR COPY

[fol. 947-979]

DEFENDANT EXHIBIT P

U. S. vs. Richfield Oil Corporation

Civil Action No. 6896-Y

Marketing Department

Proposed Capital Expenditures

By Items

Item	Southern Division	Central Division	Northern Division	Total All Divisions
1.....	$10,343,000.00	$4,971,000.00	$4,848,000.00	$20,162,000.00
2.....	500,000.00	940,000.00	460,000.00	1,900,000.00
3.....	699,000.00	139,000.00	80,000.00	918,000.00
4.....	479,000.00	365,000.00	356,000.00	1,200,000.00
5.....	273,000.00	347,000.00	176,000.00	796,000.00
6.....	990,000.00	840,000.00	590,000.00	2,420,000.00
7.....	311,000.00	82,400.00	113,200.00	506,600.00
8.....	79,000.00	306,000.00	22,500.00	406,500.00
9.....	48,600.00	32,400.00	30,600.00	111,600.00
10.....	300,000.00	150,000.00	150,000.00	600,000.00
11.....	.....	345,000.00	235,000.00	580,000.00
Total....	$14,022,600.00	$8,516,800.00	$7,061,300.00	$29,600,700.00

[fol. 980] DEFENDANT'S EXHIBIT R

Richfield Oil Corporation

Richfield Building, Los Angeles 17, California

Dear Sir:

Your Operator's Sales Contract, Form 783, bearing the same date as this letter, provides in paragraph 3 thereof that the prices to be paid by you for the two grades of gasoline to be sold and delivered thereunder shall be the designated resale prices thereof at the time and place of delivery to you, less four cents per gallon. In other words, your margin on such gasoline is four cents per gallon.

You have represented to the undersigned that a competitor has offered to sell you gasoline at total margin equal to or in excess of the total margin hereinafter specified and solely for the purpose of meeting such competition the undersigned agrees that on all gasoline sold and delivered

under said contract we will allow you a total margin of — ¢ per gallon, said total margin being inclusive of and not in addition to the margin specified in paragraph 3 of said Operator's Sales Contract.

For purposes of accounting, the undersigned reserves the right to allow at time of delivery all or any part of the extra margin specified in this letter (such extra margin being the difference between the margin specified in paragraph 3 of said Operator's Sales Contract and the total margin agreed to be allowed as aforesaid), provided, however, that any such extra margin not allowed at time of delivery shall be refunded or credited to your account on or before the 20th day of the calendar month next succeeding the month of delivery.

Yours very truly, Richfield Oil Corporation, By —— ——.

Understood and accepted: —— ——.

[fol. 981] Richfield Oil Corporation

155 West Washington Blvd., Los Angeles 15, California

Dear Sir:

Your Sales Contract, Form 337, bearing the same date as this letter, provides in Paragraph 4 thereof that the prices to be paid by you for the two grades of gasoline to be sold and delivered thereunder shall be the designated resale prices thereof at the time and place of delivery to you, less four cents per gallon. In other words, your margin on such gasoline is four cents per gallon.

You have represented to the undersigned that a competitor has offered to sell you gasolines at total margins equal to or in excess of the total margins hereinafter specified and solely for the purpose of meeting such competition the undersigned agrees that on all gasolines sold and delivered under said contract we will allow you a total margin of — ¢ per gallon as to Ethyl gasoline, and — ¢ per gallon as to Hi-Octane gasoline, said total margins being inclusive of and not in addition to the margin specified in Paragraph 4 of Sales Contract.

For purposes of accounting, the undersigned reserves the right to allow at time of delivery all or any part of the extra margins specified in this letter (such extra margins being the difference between the margin specified in Paragraph 4 of said Sales Contract and the total margins agreed to be allowed as aforesaid), provided, however, that any such extra margins not allowed at time of delivery shall be refunded or credited to your account on or before the 20th day of the calendar month next succeeding the month of delivery.

Yours very truly, Richfield Oil Corporation, By —— ——.

Understood and Accepted: —— ——.

[fol. 982] DEFENDANT'S EXHIBIT S

Work Habits—Special Retail Representative

Daily

1. Set up daily schedule for covering the LO units in a predetermined territory.
2. Check all maintenance and cleanliness of each LO unit.

a. Use form 205 as a guide.

b. Conduct the check in conjunction with the dealer discussing thoroughly his unsatisfactory items.

c. Secure the support of the dealor for performing the functions necessary to maintain a first class operation.

d. Instruct the dealer on how to correct unsatisfactory conditions.

e. Report to Branch Manager or Commission Agent or Territory Merchandiser any maintenance necessary.

f. Leave the original of the 205 with the dealer as his guide, retaining the second copy in the book and giving the first copy with the Branch Manager Commission Agent or Territory Merchandiser before leaving the territory, reporting the conditions uncovered.

Weekly

1. Written report to be given to the Division Manager on all extremely unsatisfactory conditions found during the weeks' work.

Monthly or as Occasion Arises

1. Make subsequent trips through territories previously covered, inspecting the facislities of the LO units and checking against the original 205 report made out on that unit.

a. Unsatisfactory operations which have not been corrected and do not conform to Richfield standards should be reported to the Branch Manager, Assistant Division Manager of Operations and Division Manager, recommending a check out.

b. In the event the dealer has corrected unsatisfactory conditions, he should be complimented.

c. Special Retail Representative shall have final and full authority to order the check out with no appeal whatsoever from his decision.

[fol. 983] DEFENDANT'S EXHIBIT T

Los Angeles, Calif., August 11, 9

Mr. W. G. King, Jr.

The attached letter represents the first instance in which the decision of the Supreme Court in the Standard Oil exclusive dealing case is sought to be applied as a means and reason for terminating a Richfield contract.

McCracken purchased the station and the contracts from Dazey, a dealer with whom we had executed a 3-C contract. The sales contract which was originally an exclusive one was amended in 1948 so as to provide a maximum and minimum. The minimum therein provided is 6,510 gallons a month as against an average during 1948 of 8,702, of 7,233 for the months preceding the execution of the amendment and of a present gallonage of 11,250. This falls far short of being exclusive dealing by contract.

The Standard case did not determine nor purport to determine whether contracts for specified quantities of a substantial nature restrain trade or lessen competition to such extent as to be in violation of the Anti-Trust laws. For the purpose of argument we may assume in this instance that this contract or a series of equivalent contracts would not violate the law as interpreted in the Standard Oil case.

However, the answer to this problem must be reviewed from a practical standpoint. If the Standard Oil case had not been tried and this account had walked out on its commitment under the 3-C papers we, in accordance with our established policy, would not file suit to recover possession. So in the instant case if the account would displace our gasoline in reliance upon the rule of the Standard Oil case we would be in no different position than if he displaced it pursuant to an arbitrary default of the agreements.

It may be advisable, however, to pursue our rights further by means of correspondence with the attorney for the account, setting forth the reasons why the decision in the Standard Oil case is not applicable, or possibly we should take the position that the Standard Oil decree does not apply to Richfield's operations nor to this transaction but that we are willing to release the account from his obligations as we do not deem it desirable to do business with one who is reluctant to perform the terms of our contracts.

Will you and Mr. Ragland give serious consideration to this problem. You appreciate that this is an unusual case and that McCracken is a cut price dealer and purchased this unit for the purpose of operating it as a cut price station. Such activities may spread.

Wm. J. DeMartini.

WJDM:NC

cc: Mr. H. J. Brower, Mr. R. W. Ragland, Mr. David Will.

[fol. 984] DEFENDANT'S EXHIBIT U

William J. DeMartini
Attorney at Law
555 South Flower Street
Los Angeles 13, California
Trinity 2231

August 19, 1949.

Howard M. Van Denburgh, Esq.
1004 North 2nd Street
Phoenix, Arizona

Re: Ralph S. McCracken

Dear Mr. Van Denburgh:

This will acknowledge your letter of August 9, 1949, addressed to Richfield Oil Corporation on the subject of the mutual termination between Richfield Oil Corporation and Mr. McCracken of the 3-C agreements acquired by Mr. McCracken from Loyal Dazey. In answer to your letter I had prepared a legal memorandum designed to show the difference between the operations of Richfield and that of Standard Oil Company of California but after discussion with the sales executives of Richfield Oil Corporation it has been concluded that we should release Mr. McCracken from any obligation to purchase products under said agreements. In passing I may state that Richfield does not operate under the system of exclusive dealing which was the subject matter of the Standard Oil case and the issue as to whether Richfield's operations violate the Anti-Trust laws will eventually be determined in the trial of the action against Richfield Oil Corporation now pending in the United States District Court for the Southern District of California.

Richfield executives consider it is inadvisable to attempt to force compliance of the 3-C transaction by Mr. McCracken if he is not entirely willing to accept the terms thereof. Operation of the station under compulsion would not be to the best interest of the parties.

Accordingly, Richfield will be willing to terminate its agreements on condition that Mr. McCracken fulfill his obligation to Richfield for painting done at the station within the past two years in a sum amounting to $380.46. Your client being in the service station business will be cognizant of the custom of reimbursement for painting costs in those instances where an existing supplier who has painted the station has his gasoline displaced by another supplier.

[fol. 985] It has also been concluded that Richfield may as well sell its equipment located at the station to Mr. McCracken. The list value of this equipment is $1,157.00 exclusive of freight and cost of installation. As the equipment is relatively new and Mr. McCracken will save the cost and expense of installation, we feel that this is a fair figure for this equipment.

If the aforesaid is satisfactory to you I will be pleased to prepare a Mutual Termination of the present contracts and a Bill of Sale which I will forward to our Phoenix office to be delivered to you upon receipt of the sum total of the amounts above specified.

Yours very truly, —— ——.

WJDM:NC

WILLIAM J. DE MARTINI
ATTORNEY AT LAW
888 SOUTH FIGUEROA STREET
LOS ANGELES 13, CALIFORNIA

Howard N. Van Denburgh, Esq.
1004 North 2nd Street
Phoenix, Arizona

Defendent's Exhibit V

CHECK SHEET FOR DEALER'S TBA MANUAL

USE SEQUENCE BELOW WITH CORRESPONDING SYMBOLS	STATION NUMBER OR DEALER NAME				
HAS CURRENT FORM ✓					
DOES NOT HANDLE X					
NEEDS FORM					
23. Resistoflex Prices					
24. Resistoflex Specification Catalog					
25. Schrader Products Prices & Catalog					
26. Dill Products Catalog & Prices					
27. Stant Gas Cap Prices					
28. Warner-Patterson Prices					
29. Yankee Products Prices					
30. Yankee Products Catalog					
31. "WHIZ" Products Prices					
32.					
33.					
4.					
35.					
36.					
37.					
38.					
39. Airtex Retail Prices					
40. Airtex Application Data Book					
41. Guarantee Parts Price Lists					
42. Guaranteed Parts Replacement Book					
43. Monroe Shock Absorber Prices					
44. Monroe Shock Absorber Replacement Catalog					

USE SEQUENCE BELOW WITH CORRESPONDING SYMBOLS: HAS CURRENT FORM ✓ / DOES NOT HANDLE X / NEEDS FORM	STATION NUMBER OR DEALER NAME																							
1. Goodyear Passenger Tire Retail Prices																								
2. Goodyear Truck Tire Retail Prices																								
3. Goodyear Dealer Discount Sheet																								
4. Goodyear Battery List Prices																								
5. Goodyear Dealer Prices																								
6. Rawlplug List Prices																								
7. Rawlplug Dealer Prices																								
8. Goodyear Battery Cable List Price																								
9. Goodyear Battery Cable Book																								
10. Goodyear Fan Belt & Radiator Hose Specification Book																								
11. Anderson Prices - Motors, Arms & Blades																								
12. Anderson Catalog Sheets																								
13. Champion Prices																								
14. Champion Service Manual																								
15. DuPont Price List																								
16. Eveready Flashlight & Sealed Beam Prices																								
17. Eveready Specification Catalog																								
18. Gross Products Price Lists & Catalog																								
19. Mac's Super Gloss Product Prices																								
20. Mac's Super Gloss Catalog Sheets																								
21. Purolator Prices																								
22. Purolator Sales Manual																								

RECORD OF PROGRESS

CODE TO BE HANDLED SUBJECT EXPLAINED SUBJECT FOLLOWED SUBJECT HANDLED	STATION NUMBER OR DEALER NAME				
III. HYDRA-MATICS — 1. Checking A. Preparation					
B. Checking Level					
C. Add Fluid					
2. Draining & Refilling					
A. First Filling					
B. Second Filling					
IV. POWERGLIDE 1. Checking					
2. Draining & Refilling					
A. First Filling					
B. Second Filling					
V. STUDEBAKER 1. Checking					
2. Draining & Refilling					
A. First Filling					
B. Second Filling					

COPY BOUND

III. HYDRA-MATICS **1. Checking** **A. Preparation**	Every 1000 miles — under right side of floor mat — remove inspection cover — clean around floor and unit.	**B. Second Filling**	Set handbrake and block front wheels — set lever in drive (D) — check level — add fluid needed — NEVER OVER FULL MARK.
B. Checking Level	Selector lever in neutral (N) — apply handbrake — run engine 2 minutes — remove dip-stick — clean and insert.	**V. STUDEBAKER** **1. Checking**	Warm up transmission — set handbrake and block front wheels — lever in Low (L) position — dipstick under cover plate in front floor board.
C. Add Fluid	At full or slightly under, leave alone — if at low or under add fluid to bring up to the full mark or under. NEVER OVER THE FULL MARK.	**2. Draining & Refilling**	Remove transmission oil pan plug — remove converter housing, rotate converter until plug at bottom and remove — remove converter pressure take off plug to vent — replace and tighten 3 plugs & housing.
2. Draining & Refilling	Warm up transmission fluid — turn off engine — raise car on hoist — drain transmission pan and flywheel. NOTE: ALL HYDRA-MATICS HAVE ONE DRAIN PLUG IN FLYWHEEL. Location of plug and flywheel housing different in different models — check guide — replace plugs.	**A. First Filling**	Pour 6 qts. Richlube or Richfield Penn. 10W in transmission — set handbrake and block front wheels — start engine — selector lever in Low (L) and idle.
A. First Filling	Add 8 quarts of Richfield Automatic Transmission Fluid — set handbrake — set selector lever in neutral (N) — run engine 2 minutes.	**B. Second Filling**	Add 3 more qts. Richlube or Richfield Penn. 10W and check — add additional oil to bring up to FULL — NEVER OVER FULL MARK.
B. Second Filling	With engine idling add sufficient fluid to bring level just below "L" mark — speed up engine for 3 minutes — with engine idling add enough fluid to bring to full mark — NEVER OVER THE FULL MARK.		
IV. POWERGLIDE **1. Checking**	Warm up transmission — set handbrake firmly — block front wheels — selector lever in drive (D) — dipstick same place as 1950 Dynaflow.		
2. Draining & Refilling	Remove toe plate top of front floor board — turn engine with starter (ignition off) until drain plug is at top center and remove — raise car and remove housing plug then converter plug through same hole — remove transmission plug — drain completely — replace underneath 3 plugs and one plug in floor plus toe plate.		
A. First Filling	Remove dipstick, add 3 qts. Richfield ATF — start engine, lever in neutral (N) add 6 more qts.		

RECORD OF PROGRESS

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CODE TO BE HANDLED SUBJECT EXPLAINED SUBJECT FOLLOWED SUBJECT HANDLED	STATION NUMBER OR DEALER NAME			
I. DYNAFLOW — Checking A. Preparation				
B. Reaching the Unit				
C. Checking Fluid Level				
D. Reading Gauge				
2. Draining & Refilling A. Preparation for Draining				
B. Drain Transmission Pan				
C. Drain Flywheel				
D. Install Plugs and Housing				
E. First Filling				
F. Second Filling				
II. ULTRA-MATIC 1. Checking				
2. Draining				
A. First Filling				
B. Second Filling				

COPY BOUND C

AUTOMATIC TRANSMISSION DRAINING & REFILLING

Form 1071-7 500 3-50

I. DYNAFLOW **1. Checking** **A. Preparation**	Transmission hot — selector lever in parking (P) — idling engine — hand brake set — seat cover in front.	**II. ULTRA-MATIC** **1. Checking**	Transmission warmed up — then engine stopped — then car raised on hoist — dip-stick on left side of car back of flywheel — add fluid as in Dynaflow but without the engine running.
B. Reaching the Unit	Under right floor board mat — pry up cover — clean around opening and unit — 1949 & 1950 cars under right front hood.	**2. Draining**	Unit drained exactly as Dynaflow with one transmission plug and two flywheel plugs.
C. Checking Fluid Level	Remove rod — wipe dry with clean cloth — re-install — remove and note level.	**A. First Filling**	Remove center of floor board — 7 quarts Richfield Automatic Transmission Fluid — selector lever in neutral (N) — idle engine 5 minutes — then stop engine.
D. Reading Gauge	If up to full; leave alone — if at low or under, add fluid little at a time, checking frequently — NOT OVER THE FULL MARK.	**B. Second Filling**	Add remainder of fluid to bring the level to the "full" mark. Run engine 1 minute — stop engine and re-check fluid level — NEVER OVER THE FULL MARK.
2. Draining & Refilling **A. Preparation for Draining**	Warm up transmission — put car on hoist and raise.	**(See 1071-8)**	
B. Drain Transmission Pan	Location in back of housing — drain completely — DO NOT REMOVE ACCUMULATOR PLUGS.		
C. Drain Flywheel	Remove housing — vent first plug — turn flywheel to opposite plug and remove, thus draining completely. (Quickest drain by removing both plugs)		
D. Install Plugs and Housing	Check gasket on pan plug — install one converter drain plug and TIGHTEN SECOND PLUG — replace Bell housing.		
E. First Filling	Pour in 3 quarts Richfield Automatic Transmission Fluid — selector lever in parking (P) — start engine and idle one minute.		
F. Second Filling	Add balance of fluid to bring level to just under the full mark with engine idling — run engine until fluid thoroughly warm and re-check — NEVER OVER THE FULL MARK.		

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RECORD OF PROGRESS

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CODE TO BE HANDLED SUBJECT EXPLAINED SUBJECT FOLLOWED SUBJECT HANDLED	STATION NUMBER OR DEALER NAME			
1. Sales & Profit Record MD-6				
2. Quick Sales Recorder				
3. Inventories				
4. Cash Handling				
5. Credit Cards				
6. Credit Card Invoices 3 & 3W				
7. C.D.R. Books				
8. C.O.S.D.				
9. Script				
10. Cash Receipts - MD-3				
11. Accepting Checks				
12. Service Record Cards MD-4				
13. Service Record Sticker MD-1				
14. Federal and State Tax, Social Security, Fed. Old Age Pension				
15. Workmen's Compensation				
16. Licenses - City & County				
17. Battery Adjustments				
18. Tire Adjustments				
19. Time Payment A. Credit Card Holder				
B. Non-Credit Card Holder				
20. Hourly Analysis --- Tally Sheets				

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COPY BOUND

Form 1071-C 500 3-50

1. Sales & Profit Record MD-6	Importance — small operations — daily — half hour — covers bookkeeping other than accounts payable and receivable.	**12. Service Record Cards MD-4**	Daily maintenance — transfer all information from Job Ticket — set tabs properly — follow-up cards — MD-7 and MD-7A.
2. Quick Sales Recorder	Importance — large operations — daily — covers every phase of the operation — 12 month period.	**13. Service Record Sticker MD-1**	Complete information — 2 stickers — one on door jamb — one on fire wall — definite part of lubrication job.
3. Inventories	Importance — prevents loss — take daily — balance against sales.	**14. Federal and State Tax, Social Security, Fed. Old Age Pension**	Check State Sales and Unemployment Insurance — Personal Property Tax.
4. Cash Handling	Small amount in drawer — hide remainder — do not leave over-night.	**15. Workmen's Compensation**	Check State regulations.
5. Credit Cards	Application 1151 — full information — by dealer or any company representative — notified by 1154.	**16. Licenses - City & County**	Business licenses — pump licenses — check for local regulations on occupational, used tires, used batteries, bulk sales, pressure tax inspection, etc.
6. Credit Card Invoices 3 & 3W	Fill out invoices completely — stamp up ahead — redeem 1 by driver as payment for petroleum products.	**17. Battery Adjustments**	90-day warranty — pro-rata cost with customer — collect difference due from customer based on customer buying price — adjust with TBA distributor.
7. C.D.R. Books	Special accounts — retain two — check vehicle license with book — redeemed by driver as payment for petroleum products.	**18. Tire Adjustments**	Handle all adjustments with customer as directed by TBA distributor.
8. C.O.S.D.	Apply on 1151 — put requested location on application — charges made only at specified stations — dealer given account number — driver given invoice each purchase against account number — bills sent monthly.	**19. Time Payment A. Credit Card Holder**	Application — complete information — Credit Card number — add $1 to total — 3 months — $2.00 6 months.
9. Script	$10 and $20 denominations — mostly rural — use as cash for petroleum payments.	**B. Non-Credit Card Holder**	Application — complete information — call branch or agency — add $1 to total for 3 mos. — $2.00 6 months.
10. Cash Receipts - MD-3	Receipt requested — salesman — government employees — for verification of sale.	**20. Hourly-Analysis — Tally Sheets**	Enter each sale — each hour — total number gallons or customers — place mark on chart where hour and total intersect — give sheet to merchandiser for chart preparation and analysis.
11. Accepting Checks	Should be discouraged — know customer — for amount of purchase — identification.		

RECORD OF PROGRESS

CODE TO BE HANDLED SUBJECT EXPLAINED SUBJECT FOLLOWED SUBJECT HANDLED	STATION NUMBER OR DEALER NAME
I. Personal Appearance	
II. General A. Maintenance Scheduled	
B. Building Exterior	
C. Exterior Equipment	
D. Landscaping	
E. Sales Room	
III. Lube Department A. Compressor	
B. Oil Dispensers	
C. Lube Equipment	
D. Hoist	
E. Floor	
F. Adequate Tools	
G. Refuse	
IV. Rest Rooms A. Walls	
B. Floor	
C. Toilet Bowl	
D. Wash Basin	
E. Mirrors — Waste Baskets	
F. Supplies	
G. Checked Hourly	

APPEARANCE AND MAINTENANCE

Form 1071-5 500 3-50

I. Personal Appearance	All personnel neat and clean — shave and haircut — practical shoes — approved uniforms and jackets — uniformity essential.	**E. Floor**	Clean up as work progresses — mop daily — never use gasoline — sweep after each job — maintain smooth surface — no loose tools — sump working properly.
II. General **A. Maintenance Scheduled**	Organize duties — hourly, daily, weekly, and monthly — assign responsibilities evenly — stagger monthly duties — check regularly.	**F. Adequate Tools**	Everything in its place — well arranged — all necessary tools on hand — clean and replace after each use — departmentalize tool locations — inventory monthly — replace losses — keep tools modern and in good repair.
B. Building Exterior	Wash monthly with plain water and brush — do not use soap — cleanser for oil and grease spots — clean roof where exposed — check condition of paint — clean drive daily — klenzine and water — clean grease and oil spots immediately — wash windows weekly.	**G. Refuse**	Keep picked up and in suitable container — remove before accumulation occurs — keep out of customer's sight.
C. Exterior Equipment	Pump island first impression — clean daily — soap and water or Klenzine — wipe pumps daily — wash and wax weekly — clean hoses and nozzles daily — oil racks clean and filled — signs clean and dust free — "A" board posters current, clean and authorized — lights clean and operating.	**IV. Rest Rooms** **A. Walls**	Wash weekly — wipe daily — check condition of paint — no unauthorized signs — coat hooks.
D. Landscaping	Regular attention to cultivation, gardening, trimming, watering — keep entire area free of weeds — clear five foot strip of adjoining property — never use planting area or adjoining area for rubbish.	**B. Floor**	Mop daily — sweep hourly — wax to seal surface.
E. Sales Room	Clean floors daily — keep spotless at all times — dust all merchandise daily — use feather duster — display related items — properly priced — re-merchandise regularly — keep records and files out of sight — watch for cluttered shelves, corners, and counters — clean telephone regularly — wash all glass weekly — fire extinguishers clean, filled, tagged.	**C. Toilet Bowl**	Scrape off if discolored — then scour daily — disinfect daily or more often as needed — check seat condition frequently.
III. Lube Department **A. Compressor**	Wipe clean daily — drain moisture daily — check monthly for oil level and condition — lubricate monthly — use Service Record Sticker on compressor for regular reference.	**D. Wash Basin**	Scour daily — check after use — watch for leaky faucets — discoloration.
B. Oil Dispensers	Wipe hi-boys and containers daily — check condition of identification signs and decals — clean up spots and drippings immediately.	**E. Mirrors — Waste Baskets**	Clean mirrors daily — check hourly — keep baskets clean and emptied — sanitary receptacles cleaned and disinfected daily.
C. Lube Equipment	Clean all equipment daily — wipe off after each lubrication job — lubricate moving parts frequently — keep hoses clean.	**F. Supplies**	Paper towels — toilet tissue — soap dispenser filled — seat covers — deodorant — check supplies each hour.
D. Hoist	Clean after each job — scrub daily — remove spots during job — check frequently for efficient operation.	**G. Checked Hourly**	Doors unlocked — impression created by locked doors — assign responsibility for hourly check or more often if use indicates.

RECORD OF PROGRESS

CODE TO BE HANDLED ☐ SUBJECT EXPLAINED ☒ SUBJECT FOLLOWED ☒ SUBJECT HANDLED ☒	STATION NUMBER OR DEALER NAME				
I. Develop Present Customers A. Make Analysis Sheet					
B. Analyze Losses					
C. Check for Balanced Job					
II. Determine Potential Business A. Market Survey					
B. Determine Potential Gallonage					
C. Estimate Potential Profit					
D. Compare Present With Potential Profit					
III. Develop Potential A. Market Data Book					
B. Door Openers & Giveaways					
C. Neighborhood					
1. Follow Up					
D. Commercial					
E. Outside Trading Area					
F. Traffic					
IV. Follow Up A. Market Data Book					
B. Service Record					
C. Direct Mail					
D. Advertising					

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MARKET DEVELOPMENT

Form 1071-4 500 3-50

I. Develop Present Customers **A. Make Analysis Sheet**	Use profit analysis form — present gross profit from dealers books — possible profit from analyzer wheel — determine profit lost each department.	**C. Neighborhood**	Carry Data Book — giveaways — select street — door to door — clean uniform — 25 calls a week — 5 to 7 p.m. best — Plan for Profit #5 Revised page 13 — secure all information listed in Data Book.
B. Analyze Losses	Prepare 205 with dealer — correct unsatisfactory procedures, facilities and conditions — outline proper plan to bolster weak departments shown on analysis sheet — leave 205 with TBC checked — recheck often.	**1. Follow Up**	Send MD-12 night of call — if no results, repeated phone & personal calls on "hot" prospects — use in Direct Mail. MD-13 ten days later.
C. Check for Balanced Job	Prepare profit analysis in 30 days — determine progress in reducing lost profit — if all departments improved and 205 satisfactory prepare market survey — if not repeat B above.	**D. Commercial**	Present customers in Data Book — personal calls — reciprocal business — solicit both passenger & commercial cars — use giveaways — Budget plan — lube guide — product information — follow up cards.
II. Determine Potential Business **A. Market Survey**	Prepare with dealer — use "Market Survey Pad" — follow instructions on inside cover — insist dealer do part of work — suggest, don't be arbitrary on market area selection.	**E. Outside Trading Area**	Hand bills on parked cars — license numbers for postal card mailing — free parking with purchased service.
B. Determine Potential Gallonage	Transfer survey information in triplicate to "Are You Getting All the Profits" folder.	**F. Traffic**	Excellent service — station neat & clean — seasonal giveaways — road maps — adequate lighting — highway signs.
C. Estimate Potential Profit	Put Gallonage from B above in column 4 of Profit analysis form — turn analyzer wheel to gallonage and fill in potential for each department — deduct estimated expenses in column B.	**IV. Follow Up** **A. Market Data Book**	Check periodically with phone book & city directory — personal calls on new residents — call back on customers failing to come in — solicit credit cards.
D. Compare Present With Potential Profit	Take annual net profit on present and compare annual net profit with potential — stress strongly all financial benefits in following market development plan.	**B. Service Record**	Enter immediately new customers — send reminder cards when service due MD-7 & 7A.
III. Develop Potential **A. Market Data Book**	Transfer market map to front — fill in pages with streets well spaced — from Service Record cards enter all customers on proper streets — index in back.	**C. Direct Mail**	Select direct mail campaign — use Data Book for mailing list.
B. Door Openers & Giveaways	Secure before starting development — estimate number needed from Survey.	**D. Advertising**	Tie in with seasonal campaigns — establish budget 5% gross — allot proportionally as indicated by market survey.

RECORD OF PROGRESS

CODE TO BE HANDLED ☐ SUBJECT EXPLAINED ☒ SUBJECT FOLLOWED ☒ SUBJECT HANDLED ☒	STATION NUMBER OR DEALER NAME			
I. TIRE SERVICE 1. Cross Switching				
2. Removing & Mounting				
3. Repairing Tubes				
4. Wheel Balancing				
II. BATTERY SERVICE 1. Battery Service				
2. Removing and Installing				
3. Charging				
4. Cleaning				
5. Replacing Battery Cables				
III. ELECTRICAL SERVICE 1. Replacing Light Bulbs				
2. Cleaning - Replacing Spark Plugs				
3. Replacing Fuses				
IV. COOLING SYSTEM SERVICE 1. Draining & Flushing Radiator				
2. Stop-Leak Service				
3. Replacing Radiator Hose				
4. Fan Belt				
V. MISCELLANEOUS 1. Washing				
2. Polishing				
3. Mac's U Job				
4. Replacing Wiper Blades and Arms				

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COPY BOUND

Form 1071-0 500 3-50

I. TIRE SERVICE **1. Cross Switching**	Remove tacks and glass — clean contacts — observe for breaks and cuts — check cores and caps.	**2. Cleaning - Replacing Spark Plugs**	Use Champion cleaner — test plugs — adjust gap — follow mfg. spec's. — protect porcelain — tighten securely — check wires.
2. Re. oving & Mounting	Use special rim tool on all Chrysler makes — use rubber mallet — tire irons — rubber lubricant for tubes.	**3. Replacing Fuses**	Protect fingers — follow mfg. spec's.
3. Repairing Tubes	Use hot patch — follow manufacturer's recommendations.	**IV. COOLING SYSTEM SERVICE** **1. Draining & Flushing Radiator**	Check hose — don't drain at drive — protect hands — keep motor running — add water slowly — follow mfg. spec's.
4. WHEEL BALANCING	Proper equipment — balancer — weights.	**2. STOP-LEAK SERVICE**	Check hoses — clean and flush first — drain — refill. Add Stop-Leak — run motor fast idle until leak stops.
II. BATTERY SERVICE **1. Battery Service**	Test battery with open circuit tester — report condition — clean terminals — distilled water — don't overflow — terminals tight.	**3. REPLACING RADIATOR HOSE**	Check for size — install hose — check clamps — run engine — check for leaks — re-tighten.
2. Removing & Installing	Strap carrier — protect fender — correct carrier adjustments.	**4. FAN BELT**	Check for tautness — examine belt — underneath side — loosen generator nut — install proper size belt — take up generator with crowbar & tighten — run motor and check. — sell spare belt.
3. Charging	Fast charger recommended — follow charger manufacturer's recommendations.	**V. MISCELLANEOUS** **1. Washing**	In shade — cool car first — clean interior — wheels first — clear water or approved soap — dry with chamois — paint tires.
4. Cleaning	Terminals & cables — use soda solution — then light lubricant film.	**2. Polishing**	Clean interior — clean wheels — dust body — use Mac's polish — clean chrome and glass — paint tires.
5. REPLACING BATTERY CABLES	Clean terminals thoroughly — light lubricant film — all connections tight — shims if necessary — follow chart for size.	**3. Mac's It Job**	Clean interior — wheels — body — Mac's Special Cleaner — Mac's It Gloss — clean chrome and glass — paint tires.
III. ELECTRICAL SERVICE **1. Replacing Light Bulbs**	Protect hands — follow manufacturing specifications — replace lens securely — check rims on sealed beams.	**4. Replacing Wiper Blades and Arms**	Follow specifications chart — check arm adjustment — make sure nut is tight — blade on securely.

RECORD OF PROGRESS

CODE TO BE HANDLED SUBJECT EXPLAINED SUBJECT FOLLOWED SUBJECT HANDLED	STATION NUMBER OR DEALE NAME				
PART I 1. Preparation of Job Ticket					
2. Placing Car on Hoist					
3. Lubrication Guide					
ART II 1. Body Hardware					
2. Driver's Compartment					
PART III 1. Underhood					
PART IV 1. Center Line Lubrication					
PART V 1. Chassis Lubrication					
PART VI 1. Miscellaneous Work					
PART VII 1. Final Services					
PART VIII — Other Services A. Oil Filter Service					
B. Air Cleaner Service					
C. Gasoline Filter Service					
D. Wheel Bearing Service					
E. Shock Absorber Service					
F. Universal Joints					
G. Springs — Covered					
H. Winter-Shield — Summer-Shield					

RICHFIELD LUBRICATION SERVICE

Form 1071-2 500 3-50

PART I **1. Preparation of Job Ticket**	Prepare in presence of customer — completely — check services ordered — refer to service record card and service record sticker — note and point out other needs.	**PART VII** **1. Final Services**	Two Service Record Stickers — one on fire wall — other on door jamb — all information — complete job ticket — review with customer — check oil pressure gauge — show Service Record Card to customer and explain follow-up — complete card — thank customer and ask to return.
2. Placing Car on Hoist	Center car over hoist — adjust supports — raise hoist 3" and check — raise to desired height — 10,000 lb. limit.	**PART VIII** **1. Other Services** **A. Oil Filter Service**	Check mileage — feel filter — if changing, clean case — replace gaskets — check leaks by running engine at idling speed for 3 to 5 minutes.
3. Lubrication Guide	Review chart before starting job — hang in convenient place — frequent reference — use chart to sell — service — train.	**B. Air Cleaner Service**	Excellent sales opportunity for door opener — follow procedure card for type — replace securely.
PART II **1. Body Hardware**	Start on fill-pipe side — hands clean — remove excess grease and oil — lubricate sparingly.	**C. Gasoline Filter Service**	Do not touch unless replacement gasket is available — clean thoroughly — replace gasket — check for leaks.
2. Driver's Compartment	Place covers on seat and steering wheel — lubricate dash controls only if squeak or are hard to operate — accelerator pedal — starter button hinges — hand brake — seat adjustment.	**D. Wheel Bearing Service**	Remove all old grease — clean thoroughly — mechanical packer recommended — adjust accurately — new cotter key. No grease in hub.
PART III **1. Underhood**	Fender covers — begin on side opposite oil fill-pipe — lubricate all points indicated in lube guide — service air cleaner, oil filter and crankcase ventilator if required — avoid use of petroleum lubricants on rubber — check oil — leave bayonet out and hood unlatched if drain is ordered.	**E. Shock Absorber Service**	Clean around plug and remove — have special equipment for filling — follow chart — replace plug securely. If shocks leak recommend replacement.
PART IV **1. Center Line Lubrication**	Drain crankcase and flush — replace plug — universal joints, etc., — refer to guide — service transmission and differential — service automatic transmission (see 1071-B).	**F. Universal Joints**	Remove plug — use low pressure gun — lube sparingly — replace plug — don't attempt to disassemble and repack — check procedure card for type.
PART V **1. Chassis Lubrication**	Begin on left side under driver — clockwise — clean all fittings — lubricate all fittings — constant reference to guide — service shocks — lower car on hoist.	**G. Springs - Covered**	Use "C" clamps — special spring lubricator — take weight off springs.
PART VI **1. Miscellaneous Work**	Refill crankcase — check — wheel bearings — check battery water level and condition — clean terminals — check radiator — clean oil glass — inflate tires — clean and paint oil tires — note needs on Job Ticket.	**H. Wiper-Shield Summer-Shield**	Complete 5,000 mile service twice a year — sell from any of ten services — stress saving and safety.

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RECORD OF PROGRESS

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CODE TO BE HANDLED SUBJECT EXPLAINED SUBJECT FOLLOWED SUBJECT HANDLED	STATION NUMBER OR DEALER NAME				
I. Customer Approach & Gasoline Sale					
A. Customer Greeting					
B. Gasoline Service					
. Under the Hood A. Motor Oil Service					
B. Oil Sales Methods — Oil OK					
C. Oil Sales Methods — Heads Oil					
D. Radiator Service					
E. Battery Service Underhood					
F. Underhood Sales					
III. Glass Cleaning Service					
IV. Tire & Battery Service A. Tire Service					
B. Battery Service (Not Underhood)					
'. Collecting for Sale					
VI. Two-man Service					
VII. Extra Free Services					
VIII. Courtesy Services A. Information to Customers					
B. Service to Rest Room Customers					
C. Service to Air and Water Customers					

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RICHFIELD SAFETY SERVICE

Form 1071-1 500 3-50

I. Customer Approach & Gasoline Sale	Step lively — run if necessary — approach customer from front — enthusiastic smile.	**III. Glass Cleaning Service**	Don't ask permission — driver's side — outside — inside and clockwise around car — thorough job — or none. Use plenty of cleaning fluid — change paper towel if necessary — clean wiper blades.
A. Customer Greeting	"Good morning, sir. (Pause) Shall I fill your tank this morning?" (If gasoline not specified, ask "Do you use Richfield Ethyl or Hi-Octane?")	**IV. Tire & Battery Service A. Tire Service**	Inflate to customer's requirements — check spare — replace all caps — be alert to sales possibilities. Use "Do you know ——" on sales approach.
B. Gasoline Service	Hold cap in hand — keep hose away from body — listen — guard against overflow.	**B. Battery Service (Not Underhood)**	"How long has it been since your battery was tested?" Test battery with Open Circuit Tester.
II. Under the Hood A. Motor Oil Service	Raise the hood without asking permission unless the hood is locked — if locked request customer to release hood, asking "Will you unlock your hood so I can check your water and oil?" — use Richfield paper napkins — show bayonet to customer — be alert for sales possibilities.	**V. Collecting for Sale**	Before collecting ask, "Are your lights working properly?" — if any doubt ask customer to turn lights on — advise findings — then quote item — then price — then total — acknowledge money received — thank customer — ask him to return.
B. Oil Sales Methods — Oil OK	"Your oil is at the safe driving level." (If transient add "Unless it is time to drain. How many miles have you driven with this oil?")	**VI. Two-man Service**	Salesman handles customer contacts and steps 1, 2 & 5 — helper handles steps 3 & 4, reporting findings to salesman — then contacts second car.
C. Oil Sales Methods — Needs Oil	"You need two quarts of Richlube to bring your oil up to the safe driving level." (If transient add, "Unless you need a change. How far have you driven with this oil?") "I'll put it in for you."	**VII. Extra Free Services**	After complete service, render all plus services that time allows, dust off car — use tooth brush to clean wiper blades — empty ash trays — sweep floors — oil gasoline fender cap — stress safety — follow TBA sales methods.
D. Radiator Service	Take water hose with you — examine for rust — put in some water regardless — don't overflow — watch for water leaks. Be careful due to possible anti-freeze.	**VIII. Courtesy Services A. Information to Customers**	Be courteous — give complete information — clean windshield — if possible, solicit gasoline sale — correctly.
E. Battery Service Underhood	Test battery with Open Circuit Tester — then add necessary water — advise customer of condition. Use "Do you know ——" on sales approach.	**B. Service to Rest Room Customers**	Rest Room clean — supplied — unlocked — clean windshield — working on it when customer returns — offer other services correctly.
F. Underhood Sales	Check fan belt — radiator hose — wiring — battery cables — oil filter — spark plugs — complete service before making sales approach. Use "Do you know ——" on sales approach.	**C. Service to Air and Water Customers**	Be courteous — give service requested — clean windshield — offer other services — correctly.

[fol. 1005]

DEFENDANT EXHIBIT W

Compilation of Total Number of Richfield's L. O. Stations Showing Portion and Percentage Thereof Originally Created as Service Stations by Richfield

As of December 31, 1950

	Total L. O. Stations	L. O. Stations **Created by Richfield	Percentage of L. O. Stations **Created by Richfield
*Category A	510	423	82.9%
*Category B	312	275	88.1%
*Category C	377	342	90.7%
*Category D	144	52	36.1%
Total L. O. Stations (All categories)	1,343	1,092	81.3%

(Definitions)

* Category A. Fee properties: Land and facilities owned by Richfield.

* Category B. Facilities owned by Richfield installed on land leased by Richfield.

* Category C. Lessor Built Stations: stations built by lessors to Richfield's specifications on land leased by Richfield.

* Category D. Other: stations built by lessors (but not to Richfield's specifications) on land leased by Richfield.

** Created by Richfield: This phrase refers to those stations built by Richfield or by the property owner under agreement with Richfield on sites which had never theretofore been used or equipped as a service station handling any petroleum products.

[fol. 1006]

DEFENDANT'S EXHIBIT X

337 Dealer Accounts

(January 1, 1946 to and Including December 31, 1950)

	Number Lost at Expiration of Contract			Number Lost Prior to Expiration of Contract			Total Number Lost		
	Painting Agreement in Existence at Time of Loss			Painting Agreement in Existence at Time of Loss			Painting Agreement in Existence at Time of Loss		
	Yes	No	Total	Yes	No	Total	Yes	No	Total
Southern Division	20	12	32	135	37	172	155	49	204
Central Division	28	6	34	71	37	108	99	43	142
Northern Division	33	8	41	97	30	127	130	38	168
Total	81	26	107	303	104	407	384	130	514

[fol. 1007] Compilation of 337 and

3-C Contracts In Effect
as of February 28, 1951

This compilation segregates such contracts into four groups. Each such group (A-D, inclusive) describes the ratio which the minimum quantity of gasoline (the quantity which the dealer obligates himself to purchase) specified in the dealer's sales contract bears to the dealer's average monthly purchases for the year preceding the date of the contract. Where such average monthly purchases were not available at the time the contract was written, the ratios were computed on the basis of the estimated gallonage.

(1) Contract Groups	(2) Number of Sales Contracts	(3) Percent Each Group Bears to Total Number of Sales Contracts
Group A—Less than 75%	408	25%
Group B—75% to 79%, incl.	458	28%
Group C—80% to 89%, Incl.	560	34%
Group D—90% and over	214	13%
Total Contracts	1,640	100%

[fol. 1008]

DEFENDANT'S EXHIBIT Z

U. S. vs. Richfield Oil Corporation

Civil Action No. 6896-Y

Comparison of Gasoline Gallonage Sold to Richfield L. O. Stations, Dealer 3-C Stations and Dealer Stations with Total Gasoline Gallonage Manufactured By All Companies in Arizona, California, Idaho, Nevada, Oregon and Washington

(Stated in Thousands of Gallons)

		Richfield L. O. Stations		Dealer 3-C Stations		Richfield Dealer Stations		Richfield L. O., 3-C and Dealer Stations	
Years	Total Gallons Manufactured	Gallons Sold	% Sold To Total Manufactured	Gallons Sold	% Sold To Total Manufactured	Gallons Sold	% Sold To Total Manufactured	Gallons Sold	% Sold To Total Manufactured
1938.....	3,285,878	75,772	2.31	38,641	1.18	12,166	.37	126,579	3.86
1939.....	3,379,621	84,037	2.49	34,160	1.01	17,365	.51	135,562	4.01
1940.....	3,282,352	94,892	2.89	31,768	.97	21,717	.66	148,377	4.52
1941.....	3,645,581	104,459	2.87	29,421	.81	31,655	.87	165,535	4.55
1942.....	3,648,678	77,525	2.12	19,841	.54	24,506	.67	121,872	3.33
1943.....	3,898,986	73,243	1.88	13,904	.36	22,634	.58	109,781	2.82
1944.....	4,669,181	71,851	1.54	6,484	.14	26,542	.57	104,877	2.25
[fol. 1009]									
1945.....	5,027,964	96,909	1.93	4,563	.09	36,814	.73	138,286	2.75
1946.....	4,660,105	123,413	2.65	6,257	.13	53,880	1.16	183,550	3.94
1947.....	5,182,061	120,898	2.33	11,385	.22	53,954	1.04	186,237	3.59
1948.....	5,291,901	125,018	2.36	17,050	.32	55,355	1.05	197,423	3.73
1949.....	5,703,481	142,953	2.51	19,813	.35	60,219	1.06	222,985	3.92
1950.....	5,925,060	160,759	2.71	20,385	.34	67,476	1.14	248,620	4.19

[fol. 1010]

DEFENDANT'S EXHIBIT AA

L. O. STATIONS LEASED BY RICHFIELD

STATEMENT OF RENTALS PAID AND RECEIVED

L. O. Stations Leased Richfield (Excludes Fee Owned by Properties)	1946	1947	1948	1949	1950
*Rentals Paid	$1,473,067.84	$1,345,434.46	$1,375,014.31	$1,429,480.10	$1,442,099.80
Rentals Received	1,044,080.25	983,172.81	902,338.98	970,088.92	956,563.35
Excess in Rentals Paid (Absorbed by Richfield)	428,987.50	362,261.65	472,675.33	459,391.18	485,536.54
Gasoline Gallonage	111,597,123	100,762,123	95,985,474	97,378,994	99,902,105
*Rentals Paid per Gallon	¢ 1.32	¢ 1.34	¢ 1.43	¢ 1.47	¢ 1.44
Rentals Received per Gallon	.94	.98	.94	1.00	.96
Excess Rental Cost per Gallon (Absorbed by Richfield)	.38	.36	.49	.47	.48

* Includes rentals on properties leased in an unimproved condition and on which Richfield, at its own cost, has thereafter installed service station buildings, tanks, pumps and other facilities.

[fol. 1011] Richfield's Investment in L. O. Service Stations as of December 31, 1950

Cost of Land Purchased	$11,213,657.33
*Cost of Improvements Installed	8,328,425.25
(Less Reserve for Depreciation)	
Total	$19,542,082.58

*These figures do not include improvements of the nature of tanks, pumps, compressors, hoists, neon signs, hiboys, etc.

[fol. 1012] Costs of Construction of Refining Facilities under Defense Supplies Contracts

(1) Defense Supplies Corporation Contract No. ND-N-2139, dated February 3, 1942, as reflected by the books of Richfield Oil Corporation	$ 2,647,395.27
(2) Defense Supplies Corporation Contract No. WD-N-30367, dated February 20, 1943, (Revised March 23, 1943) as reflected by the books of Richfield Oil Corporation	$17,854,515.59
Total	$20,501,910.86

1013-1014

1015-1016

1017-1018

1019-1020

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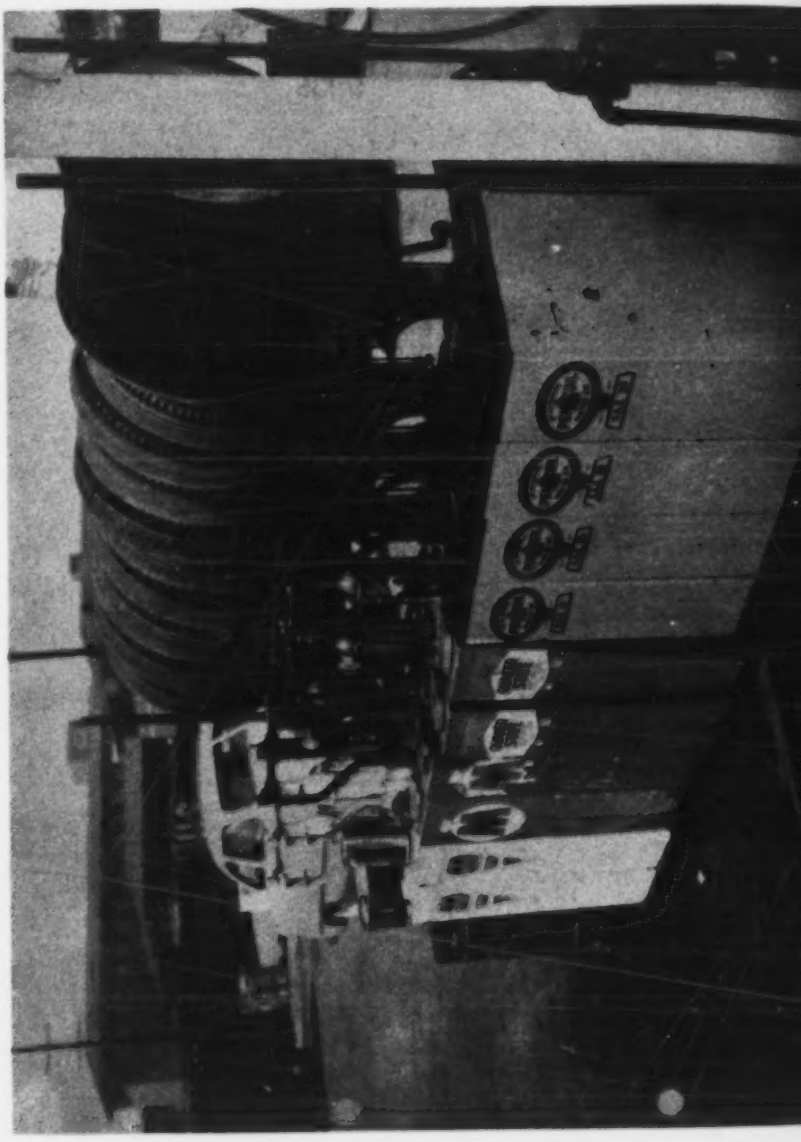
1025-1026



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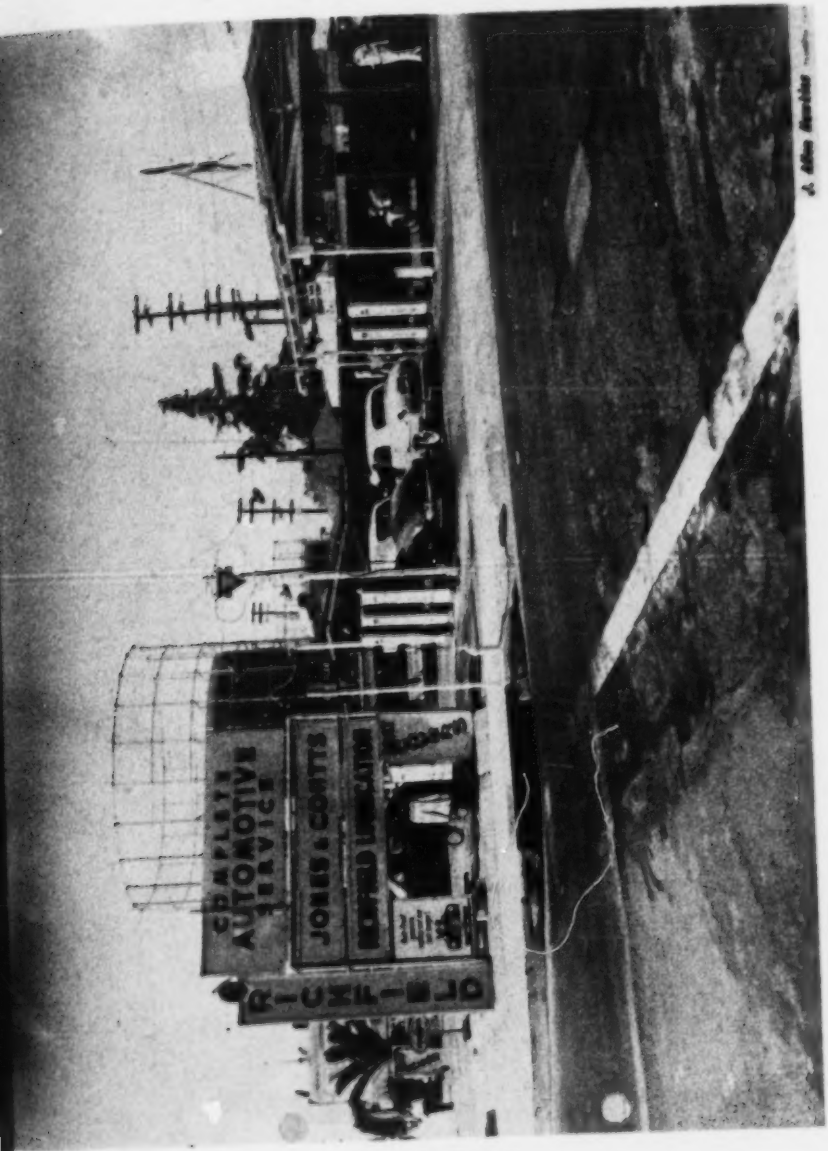

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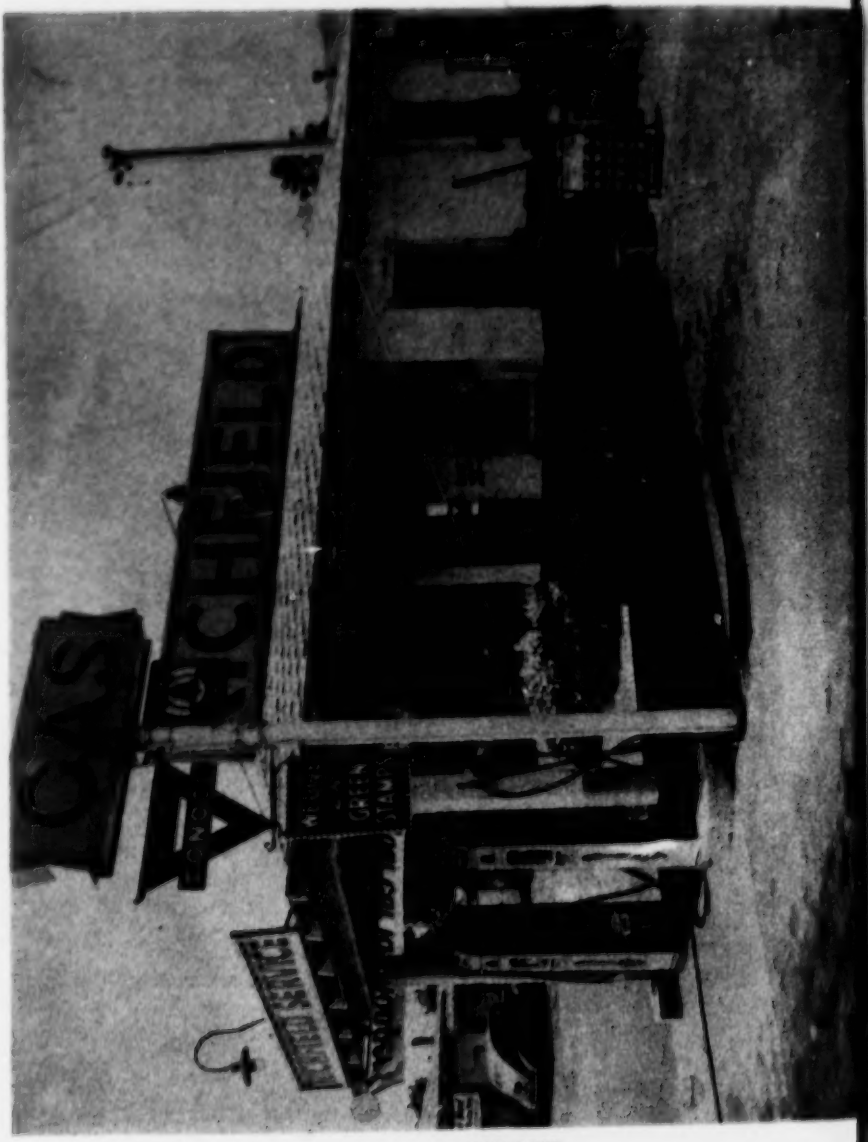

1039-1040

[fol. 1041] Richfield's refining capacity for manufacture of gasoline, both before and after installation by Richfield of refining facilities pursuant to contracts between Richfield and Defense Supplies Corporation dated, respectively, February 3, 1942, and February 20, 1943.

	Barrels per Day Motor Gasoline
1. Richfield's refinery capacity prior to installation of facilities pursuant to the contracts above described	32,875
2. Richfield's refinery capacity upon completion of facilities installed under the contracts above described*	43,580
3. Percentage of increase of capacity (2 compared to 1)	32.5%

*See supporting tabulation showing capacity of facilities installed under contracts above described.

[fol. 1042] Capacity for manufacture of gasoline of refining facilities installed pursuant to contracts between Richfield and Defense Supplies Corporation dated respectively, February 3, 1942 and February 20, 1943.

	Barrels Per Day
1. Capacity for manufacture of aviation gasoline of facilities installed by Richfield pursuant to contracts above described	15,000 Aviation Gasoline
2. Equivalent capacity for manufacture of motor gasoline of such facilities above described	10,705 Motor Gasoline

[fols. 1043-1044] WESTERN UNION

1945 Aug 15

WA420 107 4 Extra-Washington DC 15 829P
Richfield Oil Corp, Report Delivery
Richfield Bldg LOSA

You are hereby advised that this corporation desires you to reduce deliveries under the supply contracts dated as of February 20, 1943 and February 3, 1942 and any amenements thereto between your company and Reconstruction Finance Corporation as successor to Defense Supplies Corporation at the earliest possible time to the extent necessary to permit you to deliver to this corporation monthly only sufficient quantities of 100 octane aviation gasoline at contract price to enable you to repay to this corporation balance of advances made to you under the aforcmentioned contracts in the manner provided for in Section VII Paragraph (B) of such contracts.

George Stoner, Associate Director, Office of Defense Supplies.

20 1943 3 1942 100 vii(b)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 395

RICHFIELD OIL CORPORATION, APPELLANT,

vs.

THE UNITED STATES OF AMERICA

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

VOL. III

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[fols. 1045-1046] IN UNITED STATES DISTRICT COURT

Honorable Leon R. Yankwich, Judge Presiding

[Title omitted]

REPORTERS' TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Tuesday, May 8, 1951, 10:00 A.M.

APPEARANCES:

For the Plaintiff: WILLIAM C. DIXON, Esq., Special Assistant to the Attorney General; LAWRENCE W. SOMERVILLE, Esq., THERON M. HALL, Esq., THEODORE M. ALEXANDER, Esq., and T. KEISTER GREER, Esq., Special Attorneys, Department of Justice.

For the Defendant: WILLIAM J. DEMARTINI, Esq., 555 South Flower Street, Los Angeles 13, California; and KRYSTAL & PARADISE, by ROBERT E. PARADISE, Esq., 727 West Seventh Street, Los Angeles, California.

[fol. 1047] COLLOQUY

The Court: Calendar matters.

The Clerk: 6896-Y Civil, United States of America v. Richfield Oil Corporation for trial.

Mr. Dixon: Ready for the government, your Honor.

Mr. Paradise: Ready for the defendant.

The Court: All right, gentlemen, do you desire to make opening statements? You have filed memoranda and briefs, which I have read, and I am familiar with the issues.

I point to the fact that we are going to trial on the day we said we would, so that the wandering of this case has finally ended. We are actually starting to try it, and we will finish it, I hope.

If you desire to make any general opening statement, Mr. Dixon, about the turn the proof will take, you may.

Mr. Dixon: May it please the court, this is off the record.

I wish to hand to your Honor copies of a stipulation which has been entered into between counsel in this case, which covers the material which has been called for under a subpoena served on the defendants, and which in summary form covers some of the exhibits which will be offered in evidence during the course of the trial.

I think your Honor may find these helpful, particularly when [fol. 1048] we deal with the particular exhibits, which will be offered in evidence, and copies of which are contained in this stipulation.

The Court: All right.

Mr. Paradise: Do I understand, Mr. Dixon, you are filing the stipulations?

Mr. Dixon: No, they are not a part of the record.

Mr. Paradise: Should not the stipulations be filed, even though the attachments to the stipulations are not now being offered in evidence?

Mr. Dixon: I don't think it is necessary at this time.

The Court: The stipulations ordinarily are filed, because they dispense with proof, and we could give it a number, and then later on, as you offer particular documents, we will take them out of here, unless you have duplicates, and refer to them by reference.

Otherwise, this is an original stipulation, and unless it is filed or lodged with the clerk, I do not want to carry around an original stipulation.

Mr. Dixon: The purpose of handing it to your Honor, and of having the stipulation, was to shorten considerably the record in this case.

The Court: That is right.

Mr. Dixon: In other words, your Honor, may I say that there are a large number of forms that are contained in that [fol. 1049] stipulation which will not be used, and that the government has taken from the forms submitted those which it will offer in evidence.

The Court: That is correct. That is the system we followed in all these cases. In fact, when I was in the East I participated in a discussion in New York, with a committee of the Bar, and some of your opponents in the Lead case complained about the manner in which it was handled there. I said that they never did that in my court, they never threw a bunch of exhibits at me, which later they had to tie up. I said that you had to tie it up the moment you put anything in here. You probably know whom I mean.

Mr. Dixon: Yes, I heard about that.

The Court: So I told them you did not have any bad trial habits on the Pacific Coast. How you behave in the East, I don't know.

Gentlemen, it does seem to me this: A stipulation is unlike an exhibit, although as a rule they make it an exhibit. But a stipulation is there merely for the purpose of avoiding the necessity of proof, and if you are going to use any part of the exhibits, we can file the stipulation without more, and then as you come to these various documents, why, you can determine by yourself whether you want them in or not. [fol. 1050] Mr. Dixon: That was the point, your Honor. We have already taken from, for example, the first form——

The Court: All right. Have you got a copy of this?

Mr. Dixon: Yes, sir; and counsel for the defendant has also.

The Court: You want me to have the original?

Mr. Dixon: Yes, you may have the original of both of them.

The Court: Very well, we will consider it lodged with the clerk, so it will be a part of this just for convenience.

Mr. Dixon: If your Honor wishes, we will be glad to file it formally.

The Court: That is all right. The first time, you know, I let you gentlemen do as you please. After a few days, when I begin to understand the case better, I may want to substitute my methods for yours. So if you think it is better not to file it but to wait until you actually want to use it, all right. I will defer to your judgment.

The Clerk: The document is lodged, your Honor.

The Court: All right.

Mr. Paradise: Am I to understand that the exhibits, then, are considered not filed as at this time?

Mr. Dixon: That is right.

Mr. Paradise: I mean the stipulations are considered as not filed?

The Court: That is right.

[fol. 1051] Mr. Paradise: Thanks.

The Court: They are not in evidence. They are merely lodged with the clerk so he may have their custody, because I do not carry away with me any official documents, and if anything is lodged it then becomes official.

You remember—I don't know whether you do—but one of our very prominent attorneys here, one of the veterans of the Bar, Mr. Newby, once got into difficulty by scratching out something in a judgment that he thought he had a right to because he had offered the judgment, only to find that technically he committed an error by scratching a line out of the judgment that had already been filed, and it resulted in a famous libel suit that he brought against the Los Angeles Times, Newby v. The Times, etc. So we have to be very careful whether a document is part of the record or not. All right.

Opening Statement

Mr. Dixon: May it please the court, the Government wishes to make a short opening statement concerning this case, which we believe is substantially the same in character

as the case previously decided by this court against the Standard Oil Company of California.

This case, in substance, attacks in the complaint filed by the Government the so-called exclusive dealing type of arrangement between the defendant, which is a producer, marketer and distributor of petroleum products, and the [fol. 1052] various operators of retail outlets situated in a six-state area of California, Washington, Oregon, Idaho, Nevada and Arizona.

The defendant is a manufacturer and distributor and producer of petroleum products. It is not a manufacturer of automotive accessories. The complaint in this case involves both types of products, that is, the restraints on the sale in interstate commerce of both petroleum products and automotive accessories.

The Court: And by "accessories" you mean a term which covers anything from tires to, say, pumps or things like that, or fan belts or things like that. Is that what you mean?

Mr. Dixon: That is right, your Honor. The term as used in the complaint is defined on page 2 thereof, but, as your Honor indicates, that term, briefly, deals with tires, tubes and various other automotive accessories that are purchased by the motoring public at retail outlets for use or consumption in motor cars.

The Government expects that the evidence will show in this case that during the last year the volume of commerce which is involved in this complaint and which the Government contends is subject to restraints approximates between forty-three and forty-five millions of dollars. Of that amount in excess of thirty-seven million is represented by the sale of gasoline, in excess of two million by oils and [fol. 1053] greases, and between three and four million in automotive accessories.

The Government expects the evidence will show that there are approximately 3,183 retail outlets that are involved in the restraints complained of, and that these retail outlets are situated in the six states mentioned.

I mention this because the complaint alleges the restraints being operated on 2,600 outlets, whereas the evidence will show that in excess of 3,100 outlets are actually involved as of the end of last year, 1950.

The evidence will show here that there are two types of

arrangements which involve the restraints complained of, one written and one oral; that in affecting the restraints there are, briefly, about four types of arrangements involved.

The first is that which is referred to as an "LO" type of arrangement in the stipulation and will undoubtedly be referred to in that manner in the evidence. That represents an arrangement where the defendant company owns or holds the underlying lease of the propery and subleases that property to the operator of the service station outlet. There is nothing contained in that lease which deals with the purchase or sale from this defendant of any products whatsoever. That transaction is handled entirely on an oral basis and understanding.

Almost of the same type, but——

[fol. 1054] The Court: What method is provided for rental, a portion of the profits or a straight rent?

Mr. Dixon: No, your Honor. The rental provisions in the lease——

The Court: In this group they call the LO?

Mr. Dixon: In this group——

The Court: Yes.

Mr. Dixon: ——are specific as to amounts. In other words the operator is obligated to pay a minimum specified rental per month and then, in addition to that, the rental steps up in amount based upon the gallonage of petroleum products sold at that outlet by the operator. And the manner of determining that increase of the rental is generally based on a cent a gallon, although the amount may vary under different circumstances.

But, as I suggested, there is nothing whatever contained in the lease to the operator which provides that the products of the defendant, as such, shall be sold at that outlet. That is a matter entirely of oral arrangement between the operator and the defendant.

Now, there are over 1,343 outlets that might be placed in that category as of the end of last year, 1950.

A second type of arrangement is what is called a "3-C" type of arrangement. That is a situation in which the operator owns the underlying fee or the lease and he leases the station to the defendant, the defendant subleases it back [fol. 1055] immediately. The rental provisions in the lease

may vary but they are generally the same, namely, a specified amount of rent is fixed but it, as I have suggested, may vary between the lease and the sublease. In other words, the operator may lease it to the defendant for $10.00 a month, say, minimum rental, and then there may be a sliding scale, and then the lease back may be on the same basis, $10.00 a month as a minimum rental.

But the difference between this situation and the first type is that there is a sales contract that is entered into between the operator and the defendant covering the purchase of petroleum products by the operator from the defendant; so that we will have in this type of arrangement three documents which are generally executed at the same time and are really in effect one transaction, although, as will develop from an examination of these documents, the rights of the lessee—or I mean the operator under the sublease, etc., vary differently from those which are given to the defendant.

The third type of arrangement is that in which there is no lease involved at all but a sales contract is entered into between the defendant and the operator, and generally, at the same time, a painting agreement is also entered into. We will offer that type of arrangement into evidence, and the provisions of those contracts will be involved in this case.

[fol. 1056] I forgot to mention in the second type of arrangement, as of the end of last year, there were 261 deals of that type which, from the point of view of the Government, are very similar substantially to those of the first type mentioned.

There are about 1,361 of the third type of arrangement that I mentioned involved in this case.

And then the fourth type is that where there is nothing in writing, just an oral arrangement between the operator and the company.

So that, as I indicated, in this case there are in excess of 3,100 outlets, retail outlets, involved which the Government contends are subject to the restraints complained of in the complaint.

Now, I mentioned the fact that the defendant does not manufacture automotive accessories. It does, however, distribute those accessories and provides for a manner of

distribution of automotive accessories through the various outlets involved in this case.

The manner of operation with reference to automotive accessories is this: That the defendant has contracts with various automotive suppliers, that is, the suppliers of automotive accessories, providing that those suppliers will supply the defendant with the products covered by those contracts.

[fol. 1057] The defendant operates in the distribution of its petroleum products a large number of so-called bulk plants located throughout the six-state area I have mentioned.

The operator of that bulk plant outlet is generally a commission agent, so-called, who takes the petroleum products on a consignment basis. He does not buy them from the defendant, but he distributes, that is, the petroleum products to the retail outlets involved in this case and at the same time this bulk plant operator also performs the function of a distributor for the defendant of the automotive accessory part of the case. The distributor generally purchases the automotive accessories from the defendant; that is, it is an accounting arrangement. He determines the need of the particular area in which he is operating so far as those products are concerned, and generally transmits that need in an order to the defendant, who, in turn, then provides that that be delivered by the supplier to the distributor.

The distributor may also order directly from some of the other suppliers, and as to those transactions the defendant receives an overriding of, I believe the evidence will show, about 10 per cent of all business of that type that is done.

The evidence will show that these distributors may sell some automotive accessories to outlets other than these defendants—I mean, the outlets involved here, but that he is not to deal in any automotive accessory competition than [fol. 1058] those that are sponsored, so-called, as the term is used in the complaint, by the defendant. In other words, the defendant provides for a specified list of automotive accessories that the distributor is to handle, and then the distributor handles those by the method I have suggested, and these are the accessories that are distributed to the retail outlets in that manner in this case.

Now, it isn't exactly clear from the answer that was filed in this case as to whether or not there is any question about interstate commerce being involved in the transactions that I have described. We will, therefore, perhaps have to go into that, at least to some extent, but we submit that on that point there is a constant flow of the petroleum products here from the refineries of the defendant to the retail outlets, and that the control of those products is at all times retained by the defendant, until it comes to rest in the tank of the retail operator at the retail outlet, at which time the title to the gasoline and petroleum products changes to the operator from the defendant; and that it goes in a constant stream of commerce from the refinery by way of barges, tankers, and trucks to the bulk plants, and from the bulk plants to the retail outlets; that substantially the same method applies with reference to the automotive accessories that I have described and which are referred to in the case. [fol. 1059] Now, it is the contention of the government that there is no real difference between this case and that previously decided by your Honor in the Standard Oil of California case; that there may be some slight difference in the methods used and the mode of operation employed to effect the restraint, but the restraint here consists, I mean is evidenced, as in the Standard case, by written and oral arrangements, and by a course of dealing between the defendant and the operators of these various outlets.

If we understand the amended answer of the defendant, as pointed out in our brief, there appears to be an apparent concession on their part that the L-O type of station at least, is comparable, they claim, to the company-operated station, which was involved in the Standard Oil of California case. In other words, the amended answer of the defendant seems to indicate that their defense to the charges made in the complaint is based on the fact that these stations, at least, are company-operated stations, as were the some 1,100 outlets in the Standard Oil case, which were operated by Standard Stations, Inc., the other defendant in that case.

But your Honor, of course, is familiar with the findings of fact which were made in the Standard Oil case, and is briefed in that case, and with reference to these stations and all of the stations involved here, the government con-

tends that there is no employer-employee relationship exist-
[fol. 1060] ing between the operators of these outlets and this defendant, and that the operators of these outlets, whatever they may be called, are independent businessmen, buying and selling petroleum products and automotive accessories, and engaged in that type of business in these outlets, and that on the basis of your Honor's decision in the Standard Oil case that the same decree and the same judgment should be entered against the defendant at the conclusion of all of the evidence in this case.

We regard the law as well established by your Honor's decision, and we submit that it applies directly to the type of restraint involved in this case, and that it is substantially the same restraint, and that the differences as between the two cases from a point of law are non-existent.

There may be a lesser volume of commerce involved here than in the Standard case, but it is still an appreciable segment of commerce, which this court has previously held cannot be restrained under either the Sherman Act or under the Clayton Act by the type of contract which provides by the defendant's provisions, whether written or oral, that the operator of an outlet of the type involved here is to deal exclusively in the products of the defendant and those in the automotive accessory field which may be sponsored by that defendant.

The Court: All right.

[fol. 1061] COLLOQUY

Mr. Paradise: With the permission of the court, the defendant would prefer to reserve its statement regarding the facts until the opening of the defendant's case. Under those circumstances is it appropriate to comment on some of the issues referred to by Mr. Dixon?

The Court: No, I think it should be either one way or the other. I think either you should make a full opening statement, disclosing what your defense is, or if you leave it until your case, then you leave it.

Mr. Paradise: I would not comment on the facts.

The Court: Then I would not comment on it in any way.

Mr. Paradise: I see.

The Court: In other words, if you prefer to wait until the end of the government's case rather than to disclose the

nature of your defense now, I will let you do that. But to comment merely on their theory, without disclosing the defense, would not mean anything.

Mr. Paradise: Perhaps under those circumstances, your Honor, I would like to make an opening statement.

The Court: All right. That is up to you.

Mr. Paradise: The court has mentioned the preliminary memoranda——

The Court: I may say, gentlemen, that the opening statements are considered so important in these cases that, while I was in New York, the fourteenth week of the opening state-
[fol. 1062] ments in the Bankers case was still going on.

Mr. Dixon: You do not recommend that, do you, Judge?

The Court: Without any criticism as to what Judge Medina does, I say that, because there are just as many varieties of judges as there are Heinz pickles. I merely mention that. In fact, I was in conference with Mr. Dean, who represents one of the groups. But I am just emphasizing how judges consider opening statements, to the point where they take fourteen judicial weeks to hear what counsel intend to prove.

Mr. Paradise: The defendant's position, I might state at the outset, is largely set forth in some detail in the defendant's opening memorandum which is on file.

The Court: I want to make one observation before you begin. This complaint is based both on the Clayton and the Sherman Act. Insofar as the law of the case is concerned, the Supreme Court only passed in the Standard Oil case on the Clayton Act, and never got to the other, because they said it was not necessary. So that, so far as the portion of the opinion in which I dealt with the other phase is concerned, while still meeting with my approval, it stands just as my own opinion in interpreting the law, as I then viewed it. So, so far as the final decision of the Supreme Court is concerned, it was grounded upon one phase of the case made out in the lower court. I am making this observa-
[fol. 1063] tion in line with what you argued in your brief, that there are many phases in the case which are contained in my opinion which are not reflected in the Supreme Court decision. To that extent I agree with your interpretation of that case.

Mr. Paradise: Yes. I should like to say at the outset that there is the sharp differentiation between the types of service station involved, which Mr. Dixon has mentioned to the court. There are, first, the L-O type of station, which is a station owned or leased by the defendant Richfield, and which is operated by the so-called L-O operator, who is not the lessor of the station, and who is completely divorced, other than by his Form 542 sublease, from and does not have any other interest in the station.

The Court: What does "L-O" stand for?

Mr. Paradise: "L-O" is an abbreviation for Leased Out.

The Court: Oh, Leased Out.

Mr. Paradise: The other types of service stations are the so-called 3-C, and I can't tell the court what that refers to. It is an arbitrary symbol. That is a service station, as Mr. Dixon mentioned, which is owned or leased by the service station dealer himself. He leases it to Richfield, and takes a sublease back, under forms of written contract which are co-extensive in term, and, in addition to that, there is a printed form of sales contract.

[fol. 1064] The third type of service station is the so-called 337 contract, which also is an arbitrary symbol, and which refers solely to a written sales contract, which may under some circumstances also be accompanied by a painting agreement, as Mr. Dixon mentioned.

Mr. Dixon also mentioned, and I say this to your Honor for the purpose of clarity, since the issues are decidedly distinct and different with respect to the two types of cases. Now, as to the L-O stations, which are Richfield's own stations, the evidence will show that these are Richfield stations that were acquired for a particular purpose, that the operators are selected in a particular manner, that they are instructed along certain lines, that they are permitted to occupy the station under certain conditions, that the tenure of their occupancy is on a very short term basis, to implement the right of Richfield to control not only the type of product that is sold in the station but also the manner of the operation of the station, the manner of maintenance, the manner of customer dealing, and the various other aspects of a mercantile establishment.

Therefore, as to the L-O type of station, Mr. Dixon quite properly stated that insofar as those stations are concerned the defendant acknowledges that it controls the operation of the station, not only as to the type of products which is Richfield petroleum products as well as the automotive [fol. 1065] accessories under certain circumstances which may be sold there, but also the manner of the operation of the station itself.

The issues, therefore, as to the L-O stations are, primarily, whether under the facts and circumstances, all of the circumstances concerning the station itself, Richfield's purpose, the manner of the operation, the control that is used, and so forth, is lawful or unlawful in the light of the facts and the circumstances.

Now, as to the other types of stations—before I leave the L-O stations, I should mention that the complaint charges and Mr. Dixon's opening statement asserts that the L-O station operators are, one, independent, and that they are independent businessmen, which is the assertion in the complaint and in the opening statement and, two, that they are not employees of the defendant.

The nature of the relationship, those two alternatives, the defendant feels most strongly is not a proper statement either of the issues in this case, nor of the alternatives.

The defendant suggests, and the defendant's pleading and memorandum disclose that the proper statement of the issues and of the alternatives is whether they, the L-O operators, are independent operators, on the one hand, or on the other, are not independent businessmen. That, I think, must be contrasted sharply with the government's [fol. 1066] position, that they are either independent businessmen or agents or employees.

That type of alternative neither proves anything, nor is it even relevant to this case. I would like to develop that for the court at somewhat greater length, if I may.

Richfield's position is that these men are not independent businessmen, under the circumstances which will be shown to the court by the various witnesses. Richfield's original memorandum discusses the reason why relationships of the nature of an agency or employment have not been held to be within the scope of or violative of either the Sherman or the Clayton Act. It is the defendant's position that the

nature of the relationship which is exempt from the anti-trust laws is, however, not limited to either agency or employment, but that those types of relationships are merely illustrative of a broader principle, and the broader principle which is involved, and the nature of that broader principle must be determined from the reason which exists for the exclusion of those types of relationships. The broader principle is whether or not there is competition, and the subject-matter of the competition.

The court is well aware, of course, from your Honor's past experience in the anti-trust field, that the purpose of the anti-trust laws is to protect and foster competition, and to protect it, and to invalidate restraints upon com- [fol. 1067] petition. It must be a necessary corollary of that purpose that if there is no subject-matter of competition, if there is no play of competitive evidence in a particular matter, if it is not a subject-matter of competition, or is not a market, then the competitors are not hurt.

We submit that the reason why an employer may tell his employee in a store why he cannot sell the products of someone other than the employer is that that business, as carried on in that store, is the employer's own business, and it is not the subject-matter of competition between that employer and a competitor of the employer.

Take, for example, Bullock's Department Store. I think Bullock's is entirely justified, and I am sure both the court and the government will agree that Bullock's is entirely justified in telling its employees they are not on their own account and for their own account to buy the products of Robinson's and sell them in Bullock's place of business for their own profit. The same proposition and the same analysis and reason underlies the so-called agency, exempt from the antitrust laws, and there are other relationships over and above the illustration of employment or agency.

Those relationships are pointed out in the defendant's opening memorandum, relationships such as partnerships, relationships such as, in the absence of employment or [fol. 1068] agency, where there is a relationshp of trust and confidence, where there is an intimate relationship, in the words of Mr. Justice Douglas in the Masonite case, where a particular employer or supplier—I will use the word "supplier"—where a particular supplier has furnished

the instrumentality of doing business under circumstances where he maintains such control over the type of use to which that instrumentality is placed that he is entirely justified in maintaining the control over that use, and under circumstances where the business so conducted never does become the subject-matter of competition.

Therefore, I think it is a complete misnomer and a false conception for the government to assert that they are either employees or agents, on the one hand, and/or businessmen on the other. The alternatives are most certainly not that.

Differently stated, the government in its memorandum has suggested that the alternative may be between an independent contractor, on the one hand, and an employee or agent. I submit that it is most certainly true that if a man is neither an agent, nor an employee, that he is an independent contractor, for purposes of social security taxes, for example, or tort liability, pay roll taxes, workmen's compensation, and so on.

The Court: The government's idea is based upon the [fol. 1069] proposition that certain categories have been developed, and that in interpreting legislation, particularly social legislation aimed to achieve a certain object, it is to be assumed that the courts had in mind the ordinary category. So that when we speak of an independent contractor, we mean an independent businessman, and we mean a person who is recognized in common law jurisdictions as having the characteristics which an independent contractor has. When you speak of an agent or an employee, we consider them, and then if there are other relationships, such as landlord and tenant, we must bear in mind the ordinary rubrics which have developed in this law, and which the courts adhere to very strictly. In fact, the Supreme Court itself, in another case of mine, also entitled U. S. v. Standard Oil, were dealing with a soldier's case, where I sought to establish liability on the part of a tortfeasor to the government for loss of wages and hospitalization of a soldier, and the Supreme Court, with only one dissent, said that was creating a non-common law relationship, which is not recognized, and simply held that whatever the relationship between the government and the soldier is, it is not one

recognized at common law as to which the doctrine of liability applies.

[fol. 1070] So that we are always confronted with that proposition. Of course, names and labels must not be made heedlessly, and we have an expanding economy. We have come to recognize a certain relationship may be of one character and have the indicia of one character, and yet not partake of that particular character.

Early in my career as a judge of this court I was confronted in the Owl Drug case with the problem whether one of these arrangements whereby a merchant was given a portion of a store in which to conduct his business was subject to certain controls, and where, in lieu of rent, he paid a portion of profits, what relationship that established. It was argued that that relationship had none of the characteristics of the old-fashioned relationship of landlord and tenant. Nevertheless I held that it has. It is a modern counterpart, and I am happy to say that every book on agency law and every book on relations and every book on interest on real property contains that case because it was an application, at the time novel, of the characteristics of a special form of relationship which had its counterpart and which, if you judge by the strict standard of leasehold obtaining at common law, would be a nameless child.

So why I emphasize it is the point that in interpreting legislation and interpreting exceptions, whether they are contained in a statute or whether they are established by [fol. 1071] law, we have to bear in mind they use the words in the sense in which they are ordinarily used.

We have great difficulty with administrative agencies. I remember in the early days of the OPA I was confronted with this problem. The wholesalers were allowed to charge a certain price for delivered sales. I do not know whether you are familiar with this big market, this wholesale produce market, which operates chiefly at night down below Julian Street in Los Angeles. It operates from about 12:00 o'clock at night until 6:00 o'clock in the morning. It developed in that case that many of the buyers would bring their products into the neighborhood five or six blocks away and that the jobber would have his man transport the produce that

was bought and delivered it onto the truck. And the OPA said, "Why no, that is not a delivered sale. It is too close."

I said, "Well, as to a delivered sale, the word 'delivery' must be interpreted in the ordinary sense." I wrote an opinion and pointed to the fact that, for instance, they were talking about crates of oranges in that case and I said, "If the employee of the jobber should drop the crate and break it, the loss would be his. If the employee of the jobber should be hurt, the liability would be his." So that there actually was no delivery of the goods until they were placed upon the truck, and it did not make any difference whether that truck was on the next street or out in Hollywood.

[fol. 1072] I am giving you these illustrations to point to the fact that constantly we are confronted in the law with a problem as to the sense in which the words are being used in legislation, and the teachings of the Supreme Court are that you use them in the sense in which they are used for common use, unless they have become words of art, in which sense they have acquired a different meaning.

Recently when I was sitting in Seattle, in the Western District of Washington, Northern Division, I was confronted with a problem which has confronted many judges as to what the Congress meant by a foreign state or a foreign country. And I said that they used the word "foreign" in the sense in which the American people use that word. That means something other than the United States. When you speak of a "foreigner" you mean one who is not an American. And I said that they are not authorities on international law and I was not interested how Mr. Jessup or Professor Oppenheim or Mr. Hyde or the other authorities on international law interpreted the words "foreign state." I am interested in how the Congress used it, and the Congress meant a country which is not a part of the United States is a foreign state. I referred to the famous case in which Mr. Justice Cardoza was confronted with the words "a white person" in the Naturalization Statute and it was argued that, by ethnology, Hindus, especially high caste Hindus, were white, were Caucasian. But Mr. Justice Cardoza said that when they used "white" they used it [fol. 1073] in the sense in which the average man, and the man who was as much colored in his pigmentation, as the Hindu is, regardless of ethnology, is not a white person.

So I think that this is the point we have to bear in mind, and that is, that in interpreting this type of legislation when they use the word "agent", when they use the word "employee" they meant a certain relationship. And if there are relationships which are not covered, then you have to cover, first, are they of the type which correspond to those covered.

We cannot create agency and say this is something that Congress never had in mind or the courts never had in mind.

Mr. Paradise: I agree in terms with your Honor's statement and I think it is along the same lines that I was attempting to develop. When we are interpreting legislation of the nature of social security taxes or workmen's compensation under the California laws or the laws of other states, and those laws use the word "employee" and define it, the question is whether the relationship between, for example, Richfield and its L-O operator is strictly that of employee as the word is used in the statute. And when referring to the doctrine of respondeat superior of tort liability then the question is whether or not the relationship between Richfield and the L-O operator is that of principal and agent for the purposes of tort liability. We must determine whether or not he is an agent.

[fol. 1074] But neither the Sherman Act, Section 1 under which this case is brought, nor the Clayton Act, Section 3, which is also in issue in this case, uses the word "employee" or "agent" and the exemption from the operation of those statutes does not depend upon a statutory use of the words, nor does it depend upon a statutory definition of the words.

And therefore I think, your Honor, that one of the important problems in this case is to search out the background and the reason and the underlying basis for the exemption from those two statutes of the relationships of employment and agency and all the other relationships which have been exempted, such as those which are referred to in the defendant's memorandum and then ascertain whether the facts in this case, the relationship between Richfield and its L-O operators under the circumstances herein involved measures up to and is the equivalent for the purposes of the reason of the exception for those rela-

tionships which have already been exempted. I think to restate it would labor the point.

However, I think that the Government's statement of the proposition is of the issue which is involved, and also the Government's statement of alternatives which are involved is incorrect. Implicit in the Government's statement of the issues is the assumption that if a man is neither an agent nor an employee, then he must be an independent business- [fol. 1075] man. I submit that the cases cited in the defendant's memorandum sharply refute that proposition.

I think that the Government has confused the problem as to whether there is an independent businessman relationship, which is the problem here, from the question as to whether there is an independent contractual relationship, which is not the problem here. Because, if a man is not an independent businessman, it matters not whether he is an independent contractor or is not an independent contractor.

If this L-O operator is not an independent businessman, he may be an independent contractor for the purposes of workmen's compensation tort liability and others, because in determining tort liability and social security taxes, as the court has pointed out, we have two problems: One, we have the problem of statutory definition, in one sense, whether it was the particular word used. We do not have those words here to define.

More importantly, in determining the status of a man as an employee, on one hand, or an independent contractor, on the other, the test is not the question as to whether or not there is a subject matter of competition or whether there is a market or whether there is a restraint on competition, and those are the factors that must be borne in mind in determining whether he is an independent businessman for antitrust purposes.

[fol. 1076] I believe that the Government's statement of the proposition puts form over substance entirely. The Government has charged two types of effects in the complaint in this case. One, it is said that is Richfield's control over its L-O operators deprives other suppliers of petroleum products and it harms competitors in that they are unable to sell their products to Richfield's L-O stations.

The Court: Well, that is the criterion which the Supreme

Court emphasizes especially in the Chicago Taxicab case, the shut-out. It is the shut-out.

You will remember in my own opinion at that time the greatest emphasis was placed upon that case, and then on the very day on which the original opinion was filed the Columbia Steel case came out. Then I had the job of distinguishing the Columbia Steel from the other problem and determining whether or not the problem which the court propounded there had the effect.

Of course, that is material only on the Sherman Act phase, and that is the phase that the court did not get to in the Standard case because there we were dealing with the actual effect, while under the Clayton Act we catch in an embryonic state what, if they were allowed to develop, would actually result in the particular restraint.

Mr. Paradise: The significance, however, I believe, your Honor, is broader than that. I agree that there are two [fol. 1077] problems, one as to the effect of the Sherman Act purposes, and two, the test which your Honor as well as the Supreme Court imposed upon the qualifying section or section 3 of the Clayton Act for the purposes of determining the illegality under that section.

But is there not the further significance to the effect on competitors in this sense—and I say this for both Sherman Act as well as Clayton Act aspects—if there is no subject matter of competition, if there is no market, there can be no effect on competitors because competitors may not look to this business as their legitimate business. And I think that must be true if one approaches it from the original matter of relationship between an employer and an employee on a wage basis. To go back——

The Court: The Supreme Court throughout the history of the Act has held that you cannot cloak a relationship in one way so as to prevent an inquiry into the method of control.

We had the Hardwood Lumber case where there was the loosest kind of relationship, and we had the San Francisco Contractors case and there was a loose kind of a relationship. It was argued this is nothing, this is just a group of gentlemen meeting at their own club and discussing their problem. But the court said: Nay, nay, nay. We are going

to go behind this and we will see behind this so-called [fol. 1078] voluntary testimony.

After all, the Associated Press existed for many years as an eleemosynary corporation in the City of New York, until the Supreme Court brought it down to reality. And I myself recognized it as an eleemosynary corporation many years ago and held that because of certain restrictions they had in there the agreements were not in violation of the antitrust laws. Since that time the courts have departed from that concept and the Supreme Court was the one who gave the signal, and now individual newspapers have been found guilty, as Judge Emerich Freed did in Cincinnati, I think it is.

Mr. Dixon: Cleveland.

The Court: What is it?

Mr. Dixon: Cleveland.

The Court: Cleveland. And I just noticed in my copy of Editor and Publisher. There is a new one started in the south.

So that in considering the problem of whether there is stifling of monopoly and the shut-out, the prevention of access to these outlets to the makers of other products, we are not concerned with the term that the parties have applied to the relationship, but what it actually achieves.

Mr. Paradise: Yes, sir.

The Court: Because in the last analysis that is the [fol. 1079] pragmatic approach to these problems. And if as a result of outright ownership there is a foreclosure of access to the market, then the violation exists regardless of what you name the relationship, because we are not talking about competition in the abstract.

Incidentally, I presume both of you are aware of the very fine issue of the University of Illinois of their Forum was devoted entirely to antitrust problems in its winter issue of 1950. I happened to learn about it because my son is an assistant professor of chemistry there and on my way east Dean Harno heard of my presence in Urbana and was kind enough to invite me to lunch with the faculty, and I found they presented me with that issue which has a discussion from that standpoint, although only one government man was represented and he is a very able one, and that is the head of your Decree Department, Mr. Timber. That review

has a very fine series of articles on various phases of the problem of monopoly in the light of late decisions.

So to sum up the observations I am making, and that is this: We have to determine not what your L-O relationship is but whether it is of the type which lodges a control in one person or another. If under one guise or another it lodges control in the lessee, then we have to determine whether under that relationship an outsider has a right to expect to deal with the particular person. If he is free to [fol. 1080] deal, then the answer may be one. If he is not free to deal, then the answer may be a different one.

And incidentally, Professor Carlson of the University of Illinois is publishing an article in the American Economic Review, I think it is. He read it to me. In which he propounds a new theory of interpretation of law, and that is more like the theory which counsel for the defendant propounded in the Standard case. He calls it "freedom of choice from the standpoint of the consumer" and he would say, for instance, that if, notwithstanding the control of outlets, there are in the same area outlets or other concerns to which the consumer would have access, then that freedom of choice—there would be no violation of the law. He is a lawyer and economist, and I told him it was a very interesting concept but there is not any law to support it, because, I said, "If you are right, I think then the Supreme Court was wrong in the Standard case."

So I think it is a good idea to talk some of these things over, then we will know what to expect when it comes to the scope of proof. I think you have a right to show or to argue from the Government's testimony that, regardless of what the paper work shows or regardless of what the oral agreements are, in reality a relationship exists which entitles you to exclude dealing by others. In other words, you can bring up the Pick case which I still think is good law. In fact I think you conclude your brief with that case. I still [fol. 1081] believe that the Pick case stands unimpaired and that you may provide for an agency that excludes others and that in itself is not a violation of law. But that even under the guise of a legitimate agency, it is actually shown that the effect is to affect interstate commerce, not through the sale of goods locally after they have been placed with the agency. I think the Pick case does not solve the problem.

And you will remember that in the Standard case, if you read the opinion, it was the Government's contention—I think that was abandoned on appeal—at any rate it was contended in my court by Mr. Dixon that even contracts of that character are illegal per se. But I would not follow him and merely held that they are not illegal per se. But if they are effective to restrain commerce, then their original legality turns into illegality because of their effect. And I think your contention is the same in your brief, as I read it.

Mr. Paradise: Yes, insofar as our reference to the Pick case is concerned, your Honor, I think our memorandum will show we cite the Pick case solely in connection with the question of the problem of illegality per se and the question of fact under the Clayton Act, and further, with this differentiation, we cite that ultimately in connection with the so-called independent stations. Those are the 3-C stations and the 337 stations.

I feel that that Pick case has no bearing on this problem of the relationship between Richfield and the operators of [fol. 1082] L-O stations. There was no agency involved there, if my recollection is correct, nor in the Pick case were the dealers in General Motors cars which were involved anything other than independent businessmen, now were they asserted not to be independent businessmen by General Motors in the case.

I agree entirely with your Honor's statement that the characterization by a title of a relationship, whether it be agency or employee or any different relationship, does not and cannot and should not preclude the court from inquiring into the exact nature of the relationship. I think that is abundantly clear by Mr. Douglas' statement in the Masonite case where agency was involved or an agency problem was involved as a defense, and Mr. Douglas said—and it is referred to in that brief, and I think it is most pertinent here:

> "So far as the Sherman Act is concerned, the result must turn not on the skill with which counsel has manipulated the concepts of 'sale' and 'agency' but on the significance of the business practices in terms of restraint of trade."

[fol. 1083] Now, really, your Honor, that is, I think the meat of this case: What is the nature of the relationship between Richfield and these operators, and not only just the relationship, but also all the circumstances that are involved. In your Honor's suggestion a moment ago you had reference to ownership of the stations. I would like to make the court aware that we are not basing Richfield's position, insofar as the L-O operators are concerned, entirely on the ownership of these stations. We believe that if Richfield bought these stations, and put them out to independent operators on a long-term lease—I mean L-O operators on a long-term lease of, say, five years or ten years, or a substantial period of time, the precise term being unimportant, and with no reservation of the right to control them, and with no reservation of any conditions on which he must operate these stations, in a manner which Richfield controls, I think Richfield might very well, as well as any other suppliers in a similar position, permit the lessee to become an independent businessman.

Richfield, however, has not done that in this case, and it has these stations, as the court will see from the evidence, for a particular purpose, and it has maintained that purpose in its selection of the L-O operators, and in the conditions under which they are permitted to operate Richfield's own property for the sale of its own product.

[fol. 1084] Therefore, I say that in the government's approach to this matter, in saying these men are neither agents nor employees the government is putting form over substance. It would not make a bit of difference in the result on a competitor.

I mentioned a moment ago that the government has complained about the inability of competitors to sell their products to these stations. Well, if the form were different, and if these men were paid a salary as employees, the effect on the competitors would be identical, and yet the government would not contend in that case that there was any violation.

So the court is faced in this trial with determining what precisely is the relationship, and the reason for the relationship, and whether these men are independent businessmen, on the one hand, or are not independent businessmen, and whether this is properly the subject-matter of competi-

tion, and whether this is a market. The fact that they may not be employees or agents I think is neither conclusive, nor is it even relevant.

We have not contended that they are either employees or agents in the strict common law concept of the word, and I don't think it is important whether they be or not. The issue here is whether they are independent businessmen.

Now, I would like to turn to a different problem. Mr. [fol. 1085] Dixon in his discussion of the various types of service stations here involved mentioned that there were four: the L-O station, which we assert is where we do control the products and control a lot of other things, and intend to do so, on the one hand, and the 3-C and 337 stations, which we contend, while we acknowledge that they are independent businessmen—they are independent businessmen, and they are buyers on the open market, and the relationship at Richfield and any of its competitors is solely that of buyer and seller, and we, of course, in the issues in this case deny any restraint whatsoever insofar as those people are concerned. Mr. Dixon mentioned, however, a fourth type, and that is the so-called uncontracted station.

Now, in response to the government's subpoenas and interrogatories, we have given certain data concerning Richfield's sales, the quantity of the sales, the volume, the dollar value of Richfield's sales to the uncontracted stations. We have always maintained, in responding to those requests by the government, that while we were perfectly willing to comply with their reasonable requests, and we have given them a great deal of information in the light of your Honor's concept of free exchange of information in a case of this sort, we have always contended that any data or testimony or evidence with respect to the so-called uncontracted stations has no relevance to any of the issues of this case.

[fol. 1086] The Court: I will rule on that when the question arises.

Mr. Paradise: You prefer that that not be discussed at this time?

The Court: No, I do not want to discuss legal problems. I want to hear a general outline of your approach. We will be interested in specific legal problems as we come to them.

Mr. Paradise: The last matter which I would like to

mention is Mr. Dixon's reference to the decision in the Standard case. It would be presumptuous of this defendant to tell this court what was decided in the Standard case, of course, but your Honor will appreciate that in the preparation of this case it has been necessary, inasmuch as that is the leading authority in the matter, to become most familiar, not only with what the Supreme Court and your Honor ruled on the subject, but also the issues, the rulings, and the evidence, and we submit that the record, as well as the decision of this court and of the Supreme Court, sharply refute the government's suggestion in its memorandum and in its opening statement that there has been anything determined in the Standard case which has any bearing on the issue of the nature and relationship between Richfield and the L-O operators, or the significance of that [fol. 1087] relationship in terms of the Sherman Act or the Clayton Act.

Our reasons for so feeling are set forth at some length in our memorandum.

Mr. Dixon referred to the fact that in your Honor's findings in that case you stated that the L-O operators—or, I don't know what they were called in the Standard case, they were sublessees of Standard's own stations, were independent contractors. I checked your Honor's judgment in that case, where you defined an independent dealer in that case as one who operates a retail outlet as an independent business enterprise. I think you also added that he was an independent contractor, but I am sure your Honor had in mind the concept that we have been discussing, and that is, is this man an independent businessman, or is he an independent contractor for tort purposes or for tax purposes?

The government, of course, is well aware of the importance to its position that these men be shown to be independent. They have so asserted in their complaint in the Standard case, and they assert it in their complaint in this case. In the Standard case, however, there was no issue whatsoever as to whether or not the men who were lessees of Standard Stations were or were not independent businessmen. The government asserted that they were, and the defendant admitted that they were in its pleadings, and [fol. 1088] all of the witnesses so testified that they were.

Under those circumstances there was most certainly no issue to be judicially determined by the court in that case, and it is our feeling that there was no such determination.

Of course, in addition to that we have no way of comparing the facts in Richfield's relationships and its purpose with Standard's relationship and its purpose, because that was not brought out in the evidence or the testimony in the Standard case.

The Court: The Standard case took many long days to try, and we kept very long hours, and nothing was conceded, not even that interstate commerce was involved. They conceded the form of the contract, but beyond that my very dear friend, John Hall, did not concede anything. Of course, counsel can draw any parallel they desire, but ultimately that case was not a stipulated case in any shape or form, with the exception that the forms of the contracts involved were admitted as in existence, so whatever finding I made was based upon the evidence in the record.

As a matter of fact, the defendant in that case contested the government's position at every step, even going to the extent of where the government had witnesses, for instance, to show that inspectors would come around to stations to watch if any other product was sold, and the boys had to buy them like bootleggers. One fellow testified he hid [fol. 1089] them under his wife's bed. He had a little house back of the station that this inspector even looked into. They even produced the inspector to say that he did not go that far, although he suggested that it was not pleasant and that the company frowned on it. So they did not concede anything.

Mr. Paradise: They did concede, however, that the men who were the lessees in the stations were independent businessmen.

The Court: There was no concession of anything. I drew that conclusion from the particular facts. You will notice that the main defense was, the one that was presented in the upper court chiefly, the presence of competition on behalf of others, including yourself. That took very little time, and the object of that testimony, which included the representatives of your company, was to produce the contracts, and I think my friend Stanley and I corresponded about that afterwards, because he thought some of the lan-

guage I used relating to some of the witnesses might be misinterpreted. I said that I merely judged by the nature of the testimony, that what Standard sought to show was that they were doing what six or seven other companies had been doing for 20 years, and, furthermore, that these were competitors.

So whatever determination was made was made upon the basis of contested facts, not upon the basis of any admis- [fol. 1090] sions, because there were very few admissions of ultimate facts as found by the court.

Mr. Paradise: I agree with your Honor that it was contested on almost every issue,——

The Court: That is right.

Mr. Paradise: ——including interstate commerce, except the one issue of whether or not these men were independent, because Standard in its answer admitted that they were independent. That appears from page 91 of the transcript on appeal. Mr. Dixon, or the government, during the course of the trial brought out that they were independent, independent businessmen, these various operators and lessees of Standard Stations, regardless of the term in their contract, which I think was something over six months, rather than this 24-hour arrangement we have, and Standard offered no evidence to the contrary.

I believe that I have discussed with the court our main thoughts concerning the issues involved. Thank you, sir.

The Court: All right.

COLLOQUY

Mr. Dixon: The government will call now for the return under paragraph 18 of the subpoena served on the defendant.

Mr. DeMartini: Paragraph 18 of which subpoena, Mr. Dixon?

Mr. Dixon: The first subpoena.

[fol. 1091] Mr. DeMartini: These are, I think, the documents called for (handing documents to counsel).

Mr. Dixon: I will call for the return under paragraph 19 of the subpoena.

Mr. DeMartini: Incident to No. 19, Mr. Dixon, we have no response.

Mr. Paradise: You mean there are no——

Mr. DeMartini: There are no documents covered by that call.

Mr. Dixon: I will call for the return under paragraph 22 of the subpoena.

Mr. DeMartini: In response to paragraph No. 22, I submit several documents (handing documents to counsel).

Mr. Dixon: I will call for a return under paragraph 24 of the subpoena.

Mr. DeMartini: In response to paragraph 24, Mr. Dixon, we present you with these three cases here (indicating). Your Honor cannot see them, I believe, so I will step aside.

Mr. Dixon: Thank you very much.

Mr. Paradise: Those have been disclosed to the plaintiff in advance.

Mr. Dixon: I will call for the return under paragraph 25 of the subpoena.

Mr. DeMartini: In response to paragraph 25, we submit several documents (handing documents to counsel).

[fol. 1092] Mr. Dixon: I will call for the return under paragraph 26 of the subpoena.

Mr. DeMartini: Several documents are produced in answer to paragraph 26 (handing documents to counsel).

Mr. Dixon: We now call for the return under the supplemental subpoena served on the defendant, items 1 to——

Mr. DeMartini: In response to item 1 we have not produced the documents at this time, and I think it was understood that we would produce those in connection with the various witnesses called.

Mr. Dixon: Rather than take the time to call for each paragraph under the balance of the subpoena, which was rather long, may we call for it in toto at this time, and then if there are any paragraphs on which no return is being made, would you so specify?

Mr. DeMartini: Well, in response to that, the second subpoena is divided into three sections.

Mr. Dixon: That is right.

Mr. DeMartini: In response to the second section, we produce a number of items of correspondence called for. There are several missing, but we have numbered them so that you can readily tell which items are not produced. Those that are not produced we could not find. Here is a

copy for your use under 2, Mr. Dixon (handing documents to counsel).

Mr. Dixon: Thank you very much.

[fol. 1093] Mr. DeMartini: In response to Section 3, we produce several documents. Here again there was no material produced in response to several of the calls. If you wish me to enumerate them, I can do so.

Mr. Dixon: That will not be necessary at this time, if you will advise us as to that off the record.

The Court: Gentlemen, why can't we do this——

Mr. Dixon: That completes it, your Honor.

The Court: I thought you were going to take more time. All right.

Mr. Dixon: The government has previously submitted to the clerk, to be marked for identification, Exhibits No. 1, 1-A through G, inclusive, the same dealing with the so-called L-O type of arrangement; Government's Exhibit 2, for identification, being a form of lease used with the so-called truck station; Exhibits Nos. 3, 3-A through 3-D, inclusive, being those documents related to the 3-C arrangement in existence prior to the war, and concerning which we are submitting those only as background material; Exhibits 4, 4-A through D, inclusive, for identification, the same being the forms of agreement used with the 3-C arrangement commencing November 1945 through the present time; Exhibits marked No. 5, 5-A through 5-I, inclusive, dealing principally with those contracts in written form between the third type of outlet referred to in our [fol. 1094] opening statement and the defendant.

(The documents referred to were marked Plaintiff's Exhibits Nos. 1, 1-A through G, inclusive; 2, 3, 3-A through 3-D, inclusive; 4, 4-A through D, inclusive; 5, 5-A through 5-I, inclusive, for identification.)

Mr. Dixon: The government offers all of these exhibits in evidence.

Mr. Paradise: I would like to enter an objection to certain of them, your Honor, but I haven't examined them. In accordance with the numbers that Mr. Dixon has mentioned, we did not know they had already been presented to the clerk for identification. May I do that during the noon hour?

The Court: That is merely a matter of convenience. It allows the clerk to keep track of the documents. I will tell you this: We have gotten a good start, and before the presentation of oral evidence begins, if you desire, we can take our noon recess now, and then you can examine these documents and offer specific objections when we reconvene at 2:00 o'clock.

Mr. Paradise: Thank you, your Honor.

The Court: That is the only group you are going to offer at the present time? You are going to put a witness on after that?

Mr. Dixon: Yes.

The Court: Or do you have more documents?

[fol. 1095] Mr. Dixon: That is all of the documents.

The Court: You will remember that we will follow the same procedure we followed before. We are not going to stop to read documents. When you fall down on witnesses, or somebody wants a rest, you can have somebody read them, if you need to read anything.

Mr. Dixon: Thank you, your Honor.

The Court: I think that is the best procedure in all of these long cases that have a lot of documentary evidence.

All right, gentlemen, we will take a recess now until 2:00 o'clock.

(Whereupon at 11:55 o'clock a. m., a recess was taken until 2:00 o'clock p.m. of the same day.)

[fol. 1096] Tuesday, May 8, 1951, 2:00 P.M.

The Court: All right, gentlemen.

Mr. Dixon: I believe when we adjourned——

The Court: Yes, counsel was going to look at some of the exhibits that you were offering.

Mr. Paradise: I have examined them, your Honor, and would like to make an objection to four of the forms that are offered. The particular exhibits to which the objection is directed are Exhibit-5-A, 5-C, 5-E, and 5-F.

The Court: May I have them?

Mr. Paradise: Exhibit-5A, 5-C, 5-E, 5-F. Your Honor, those were all agreements or instruments which are called painting agreements. The objection is not on the basis of relevancy, because I admit that these are all relevant to

the original background, original transactions with the so-called 337 dealers.

The objection is a formal one which is based upon materiality. The painting agreements contain nothing concerning the sale of the products which is the basis of the charge here and the issue in this lawsuit. I appreciate that at this stage of the case your Honor could not possibly pass on the question of materiality, and therefore the objection is entered primarily for the record and to state our position.

The Court: I will overrule the objection. I will reserve the right to strike as to any of these as to which objection [fol. 1097] is made. I may say that in itself, of course, an agreement whereby somebody agrees to paint a sign, to paint a station, in case of certain things, including removal of other things, in itself may not have any significance, but it may, along with other facts indicate—well, not "indicate"—may lend itself to the inference that it was one of the methods resorted to to secure exclusive representation that only Richfield products were being sold at the place. So it may have some bearing upon the issue.

The objection is overruled. However, you may move to strike at the conclusion of the Government case if, in the light of such facts as may appear, this may show up to be something sporadic and not a part of the pattern or the plan in order to exercise control over the stations.

Mr. Dixon: I take it, your Honor, the documents offered are admitted?

The Court: They are received now. Where do we start, with 5 what?

Mr. Dixon: No. 1.

The Court: The others are not objected to?

Mr. Dixon: Oh, yes, that is right.

The Court: Then the documents have been offered, No. 1 to 1-G, No. 2, 3 to 3-D, 4 to 4-D, 5 to 5-I, will be received and given the identical numbers.

(The documents referred to were marked Plaintiff's Exhibits 1 to 1-G, No. 2, 3 to 3-D, 4 to 4-D, 5 through 5-I and received in evidence.)

[fol. 1098] Mr. Dixon: The Government will call Mr. King under Rule 43(b).

W. G. KING, JR., called as a witness by the plaintiff under Rule 43(b), being first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name, please?
The Witness: W. G. King, Jr.

Direct Examination

By Mr. Dixon:

The Court: All right, go ahead.

By Mr. Dixon:

Q. Will you state your full name, please?
A. W. G. King, Jr.
Q. Where do you reside, Mr. King?
A. I reside in South Pasadena.
Q. What position or office do you have with the Richfield Oil Corporation?
A. Vice-president and general salesmanager.
Q. How long have you been with the Richfield Oil Corporation?
A. Since 1937.
Q. Is that the time at which the Richfield Oil Corporation commenced to do business after its reorganization?
A. Yes, sir.
Q. That was on or about the early part of March 1937?
A. Yes, sir.
[fol. 1099] Q. And you have been with that company ever since that date?
A. Yes, sir.
Q. What position did you hold with the company in 1937, if any?
A. Manager of their southern division.
Q. You held that position until around about 1945?
A. Until August of 1946.
Q. And generally, as manager of the southern division, you were in charge of the marketing and other activities of Richfield in your division?

A. Yes, sir.

Q. During that period of time?

A. Yes, sir.

Q. What position did you hold or have you held in addition to that of southern division manager for Richfield?

A. Prior to my present position I was assistant general salesmanager.

Q. In the marketing department?

A. Yes, sir.

Q. How long did you hold that position?

A. August 1946 until October of 1949.

Q. And at that time you became vice-president and general salesmanager of Richfield?

A. Yes, sir.

Q. And have held that office ever since that date?

[fol. 1100] A. Yes, sir.

Q. While you were assistant general salesmanager of the marketing division who was your superior, Mr. King?

A. W. T. Dinkins.

Q. And he held the position that you now hold and have held since 1949?

A. Yes, sir.

Q. And Mr. Dinkins is deceased, is he?

A. Yes, sir.

[fol. 1101] Q. Was Mr. Dinkins vice-president and general sales manager of Richfield from the time of its organization in 1937 until the date of his death in 1949?

A. Yes, sir.

Q. Now, as vice-president, in charge of marketing and general sales manager of the company, are you familiar with the manner of distribution of the petroleum products of your company?

A. Yes, sir.

Q. And the marketing methods and policies of your company?

A. I believe so.

Mr. Paradise: Mr. King, forgive me, but we can't hear you over here. Can you speak up, please?

The Court: Speak loud enough so that counsel may hear you, Mr. King. Imagine yourself addressing a pep talk to your salesmen.

The Witness: All right, your Honor.
The Court: You have to sell yourself.
The Witness: That might be pretty loud.
The Court: That is all right. We all talk that way.

By Mr. Dixon:

Q. How many divisions of the marketing division does your company have, Mr. King?
[fol. 1102] A. We have three marketing divisions.
Q. Will you state what those are?
A. There is the Northern Division, the Central Division, and the Southern Division.
Q. What territories do each of these divisions cover?
A. The Northern Division comprises the states of Washington and Oregon, and a part of the state of Idaho. The Central Division comprises what we call Northern California, or that area north of the Tehachapi up to the Oregon line, and the greater part of Nevada. And the Southern Division comprises the balance of the state of California, and the balance of the state of Nevada not covered by the Central Division, and including the entire state of Arizona.
Q. Now, your company has how many refineries, Mr. King?
A. We operate one refinery.
Q. Where is that located?
A. Watson, California.
Q. In the state of California?
A. Yes, sir.
Q. And all of the gasoline which is distributed by your company through the six states that you have described is refined at that location, is it?
A. Yes, sir.
Q. And it is shipped from the refinery to the various [fol. 1103] bulk plants of the company located in the six-state area described, is it?
A. Via our deep water terminals and thence to these plants, yes, sir.
Q. About how many bulk plants does Richfield have, can you tell the court?
A. In the neighborhood of 220.

Q. Are those located in various parts of the six states that Richfield does business in?

A. Yes, sir.

Q. The gasoline refined at the Watson refinery is then shipped from the refinery either by tanker or truck to the various bulk plants which are operated by the company in the six-state area; is that correct.

A. Well, I——

Q. Generally speaking?

A. I mentioned that the gasoline is shipped from the refinery to deep-water terminals and thence from those terminals to these bulk plants. Some shipments are made direct from the refinery to bulk plants.

Q. Such gasoline as is distributed for resale purposes within the areas mentioned, that is, within the six-state area, is delivered from your approximately 220 bulk plants to the retail outlets, where it is resold; is that correct?

A. Yes, sir.

[fol. 1104] Q. How are the quantities of gasoline that are shipped to your bulk plants from your refineries determined, generally speaking? In other words, when do you know to ship to a particular bulk plant from your refinery?

A. We have an order and distribution department, and they replenish supplies on a regular schedule or as ordered.

Q. In other words, it is a part of the marketing procedure, is it not, to see that there is a constant flow of gasoline from your refinery to the various bulk plant outlets in the six-state area?

A. Yes, sir.

Q. And the quantities that are shipped to those outlets are generally determined either on specific order from the bulk plant operators or in anticipated needs of the particular plant operator in that area; is that correct?

A. Yes, sir.

Q. Now, does your company manufacture any automotive accessories? And by that term I mean any automobile tires or tubes, or batteries?

A. No, sir.

Q. Does it manufacture any other type of automotive accessories, such as spark plugs, windshield wipers, and comparable items?

A. No, sir.

Q. Has it ever done so since you have been with the [fol. 1105] company?

A. Not to my knowledge.

Q. But Richfield does handle a considerable—by "handle" I mean, do you purchase from various manufacturers of that type of product such products?

A. Yes, sir.

Q. That type of marketing, that is, the marketing of that type of product is handled by this division that is under you, is it not?

A. A department under my supervision.

Q. So that you are familiar with the general manner and method of merchandising automotive accessories by the company; is that correct?

A. Yes, sir.

Q. Now, it is a fact, is it not, that Richfield does in any given year purchase for distribution or resale purposes a large quantity of automotive accessories of the type that I have mentioned?

A. I don't know—I can't—I don't know your interpretation of "large quantity." I would answer that——

Q. I would say between three and four million dollars per year?

A. That would approximately cover the wholesale value of such items that we sell to distributors.

Q. That is, that would represent the cost to Richfield [fol. 1106] of the products which are in turn sold to your distributors; is that correct?

The Court: Are you talking about products in general—petroleum products and accessories?

Mr. Dixon: No, your Honor; accessories.

The Court: Or just petroleum products?

Mr. Dixon: I am talking now just about automotive accessories.

Mr. Paradise: Mr. Dixon, we have a stipulation as to the amounts involved?

Mr. Dixon: Yes, I am going to put that in shortly, but now I just wanted to get the method and manner of distribution.

By Mr. Dixon:

Q. Would you answer the question, please?
The Court: Read the question.

(The question was read.)

The Witness: I believe I answered that, Mr. Dixon, that that would approximately represent the value of that type of products that Richfield sells to its distributors.

By Mr. Dixon:

Q. Now, your distributors of these automotive accessories are also bulk plant operators, are they not, Mr. King?

A. In a few instances they also act in the capacity of what we call a commission agent.

[fol. 1107] Q. Well, about how many of these—how many distributors of automotive accessory products do you have?

A. I don't know exactly, but I would say we have in the neighborhood of fifty.

Q. That is, fifty distributors to whom you sell these three or four million dollars of automotive accessories you mentioned as being purchased during a given year from the supplier or manufacturer?

A. Yes, sir.

Q. And these distributors are located at the various points in the six-state area in which Richfield distributes its petroleum products, are they?

A. Yes, sir.

Q. Will you state to the court just how, or the method or manner in which Richfield orders these products, these automotive accessories, from the manufacturers or suppliers thereof? Do you understand my question?

A. I would like to have you repeat it, please.

Q. Well, when Richfield sends in an order—I will withdraw my question. When Richfield sends in an order to a TBA manufacturer or supplier, it generally has orders from its TBA distributors, does it not, for such products?

A. Yes, sir.

Q. And sometimes it may anticipate such orders from the distributor, and order the accessories from the sup-

[fol. 1108] plier for direct shipment, does it not?

A. That is correct.

Q. And the manufacturers or suppliers of these various items are located throughout the various states of the country are they not?

A. A few of them are, yes.

Q. So that your orders for these products are sent to those manufacturers that are located in the various states of the United States and then shipped on your order to the distributor; is that correct?

A. Yes, sir.

Q. Do you know what happens to those accessories after they are shipped to the distributor?

A. Well, the distributor, in turn, sells those products or items to the service station trade within his area or vicinity.

[fol. 1109] Q. And by "his area or vicinity" you mean the area given to him by your company within which to dispose of these products, these automotive accessories?

A. Within that area, yes, sir.

Q. And when you designate or appoint such a distributor is he given a list of the outlets with which Richfield has some kind of an arrangement for the sale of its petroleum products?

A. After he has been established as a distributor we notify him of the accounts, the various accounts in that area that are handling Richfield products.

Q. The distributor may also order direct from some of the suppliers, may he not, for resale purposes, outlets we have been talking about, the retail outlets?

A. Yes, he may order TB items from a number of suppliers or manufacturers.

Q. But he may not order any competitive items, that is, by competitive I mean items which are competitive with those with which Richfield has some arrangement with a supplier of such products, may he?

A. No, that is not correct.

Q. Well, what is the fact with reference to that, Mr. King?

A. These distributors can and do order and sell and distribute TB items that are in addition to an approved list of items, that is, approved by Richfield, and in many

[fol. 1110] instances they may and do handle items that are in competition with those items.

Q. Does Richfield get an underwriting commission on all such sales, if any, made by such distributors?

A. We earn a profit only on the sale of those items that are in Richfield's approved list.

Q. But you say he may sell automotive accessories or buy them from suppliers other than those that you designate, where such other supplier makes products competitive to those with whom you have such arrangements?

A. Yes, sir.

Q. Is that a fact?

A. Yes, sir.

Q. What is the fact with reference to tires which Richfield handles, that is, what company do you have an arrangement with for the supplying of automotive tires and tubes to your distributors, if any?

A. We have an arrangement with the Goodyear Tire & Rubber Co.

Q. And it works in the manner that you have described, that is, Richfield orders the tires from the Goodyear Tire & Rubber Co., and Goodyear in turn makes delivery of your orders to the designated distributors on your order, is that correct?

A. The TBA distributor——

Mr. Dixon: Could you answer that just yes or no, please?

[fol. 1111] The Court: He may explain his answer.

Mr. Dixon: Yes.

The Court: If you can answer yes or no, you should, and then explain your answer.

The Witness: Thank you, your Honor. I would like to explain my answer.

The Court: All right.

Mr. Dixon: I would prefer, please—I think if the question can be read, it is capable of a yes or no answer.

The Witness: All right.

Mr. Dixon: I have no objection to any explanation, but I would like to get the answer first.

The Court: All right. Read the question.

Mr. Dixon: Would you read the question, Mr. Reporter, please?

(Question read by the reporter.)

Mr. Dixon: Can you answer that yes or no?
The Court: Just a minute. Give him a chance.
Mr. Dixon: Yes. I am sorry, your Honor.
The Court: You are giving him the rush act.

A. Yes.

The Court: All right. Now you may explain it.
The Witness: Well, I think by answering "yes," unless you want some explanation?
The Court: No, I do not want any explanation. I merely [fol. 1112] want to tell you we do not run a court the way you see it in a motion picture.
The Witness: Thank you, sir.
The Court: Nobody browbeats you. If you want to give an explanation of an answer you have a right to do that.
The Witness: Thank you, sir.
The Court: I do not know whether you have ever been in court before. I presume you have.
The Witness: A very few times, sir.
The Court: I hope your opinion of us won't change after this.
The Witness: I hope not.
The Court: All right.

By Mr. Dixon:

Q. Would any of your designated distributors be authorized by you to order automotive tires and tubes from sources other than Goodyear, in the event you could secure such tires and tubes as were required by the distributor from Goodyear?
A. Was your question there would they be authorized to?
Q. Yes.
A. We would have——
Q. Can you answer that yes or no. I don't want to be browbeating the witness, your Honor.
The Court: No. I think the use of the word "authorized" [fol. 1113] calls more for a conclusion than of an answer. I can't insist on him answering that yes or no.

Mr. Dixon: All right, your Honor.

A. We would have no control over the TBA distributors, over any purchases he might make from any supplier or manufacturer that he saw fit to make them from.

The Court: Over and above what you supplied.

The Witness: Over and above what we supply.

By Mr. Dixon:

Q. Do you know in your experience of any instances in which any of your distributors have in fact purchased any tires or tubes from sources other than Goodyear while you have had a contract with Goodyear?

A. Yes, sir.

Q. What instances can you give the court of such a situation?

A. Do you want me to—I cannot designate, I would not want to designate by name right now, but I know that that practice—I know that that has occurred numerous times.

The Court: With your knowledge, or what?

The Witness: Yes, sir; with our complete knowledge.

The Court: Were those instances in which you could not supply the particular item or where the distributor, for reasons of his own, whether he had a special customer or not, sought the different items?

The Witness: In both instances, your Honor. In other [fol. 1114] words, the distributor has seen fit to augment his supply or increase his supply of materials and, at the same time, whether it be in a period of short supply or not.

The Court: I see. All right.

By Mr. Dixon:

Q. Do you know of any particular instances of the type that you have mentioned, to your own knowledge, Mr. King?

A. I would be hard pressed to recall the distributors' names, but it has been my experience that that condition has prevailed many times, that you speak of or that I speak of.

Q. But you cannot give us at this time any names of

any of the distributors with which that has actually occurred?

A. Not without guessing at the moment, sir.

Q. Well, we don't want you to guess.

A. I don't want to guess, but I know that that has been the case.

Q. Is there any way in which your memory could be refreshed concerning such instances?

A. Yes, possibly by reviewing the list of our distributors.

Q. Well, I am going to ask you if you will do that when we are through today and tell us at some other time what the names of those distributors are. Would you do that?

A. All right, sir.

Q. Are these arrangements that you make with your [fol. 1115] TBA distributors in writing? Do you have anything in writing with them?

A. No, we do not have anything in writing with them.

Q. The arrangement is entirely oral, is that correct?

A. That is correct.

The Court: On what basis? Do they handle them like a factor, that is, as your property? Do they sell for you or just on the basis of profit, the title remaining with you until sold, or what?

The Witness: No, sir. It is on a buy and sell arrangement. In other words, it is their inventory.

The Court: You sell them direct?

The Witness: We sell them direct.

The Court: You sell them direct and then they make whatever profit they charge over and above the cost of the goods?

The Witness: That is right, sir.

Mr. Paradise: There is one exception to that with respect to "car and home" merchandise, is there not, Mr. King? So that the judge gets the complete story. I don't want to interrupt your examination.

The Court: No, that is all right. I mean I am trying to get a picture, gentlemen. You know my custom. I do not want to break the continuity of your examination.

Mr. Dixon: May I have that question, Judge? I am sorry.

[fol. 1116] The Court: Yes. Counsel merely added a statement. Go ahead and read it.

(Statement of Mr. Paradise read by the reporter.)

Mr. Paradise: Perhaps my interruption was untimely, your Honor. There is a certain merchandise, as Mr. Dixon knows, because it is covered in our stipulation, from which Richfield gets a commission rather than being a purchase and sale, and that is that car and home merchandise.

The Witness: Thank you for refreshing my memory, but I had overlooked that.

The Court: That is correct?

The Witness: That is correct, sir.

By Mr. Dixon:

Q. And Richfield also sells some TBA products directly to retail outlets, does it not?

A. No.

Q. That is, there are no sales by Richfield of any TBA products direct to retail outlets?

A. No, sir.

Q. You are certain of that?

A. I am positive of that.

Q. Now coming back to petroleum products, Richfield, of course, refines motor oils and greases, does it not, for distribution and sale to retail outlets?

A. Yes, sir.

Q. In the six-state area mentioned?

[fol. 1117] A. Yes, sir.

Q. And are those lubricating oils and greases refined also at the Watson Refinery in California?

A. Yes, sir.

Q. Are they shipped from that refinery to bulk plant outlets in substantially the same manner, that is, on orders and in anticipation of orders from the bulk plant operators in such areas?

A. Yes, sir; in the same manner as we have described heretofore for gasoline.

Q. And Richfield then delivers the gasoline and the motor oils and greases that we are talking about from the bulk plants in the six-state area direct to the retail outlets

for resale purposes in the six-state area, is that correct?

A. Yes, sir.

Q. Do you know who holds the legal title to the petroleum products, that is, the gasoline, the greases and oils that we have mentioned, until they are delivered to the retail outlets in the various states of the six-state area?

A. Richfield holds the title.

Q. So that from the time the gasoline or greases or oils leave the refinery until its reaches the particular retail outlet in any one of the six states that we are referring to in which Richfield does business, Richfield retains the control over that product during that entire period of time, is that correct?

[fol. 1118] A. Until it is placed in the customers' tanks.

Q. Now, Mr. King, are you familiar with the various forms of written agreement which Richfield uses in marketing its petroleum products for resale purposes to retail outlets?

A. I believe so.

Q. Do you know what types of written arrangement, if any, Richfield was using in merchandising and disposing of its petroleum products which were delivered to retail outlets for resale purposes in 1937? It is a hard question and I am going to——

A. You are going back a good many years. You are speaking following the reorganization of the company now?

Q. That is right. Nothing goes prior to that time.

A. I believe that we had in use and were using at that time a sales contract covering sale of petroleum products. I limit that to gasoline and lubricating oils and grease. And that form was known as the No. 337.

[fol. 1119] Q. What do you understand the meaning of the term "company-operated station" to be in the industry?

Mr. Paradise: I object as being incompetent, irrelevent and immaterial.

The Court: What was the question?

(The question was read.)

The Court: Overruled.

The Witness: Overruled?

The Court: Yes.

The Witness: I didn't get your ruling.

The Court: You haven't got educated yet. Please go ahead.

The Witness: I understand, Judge, but I didn't hear your word.

The Court: Don't get educated too fast. Most of them get educated in the first day. "Overruled" means that you must answer the question.

The Witness: All right, sir.

Mr. Dixon: Do you want the question read?

The Witness: "Company-operated station" I would interpret to include those stations that are operated by individuals in the employ of the company owning the stations.

By Mr. Dixon:

Q. With your knowledge of the industry are those stations, or retail outlets, rather, which are operated, for example, by Standard Stations, Inc. within that classifica-
[fol. 1120] tion?

A. Yes, sir, they would fall in that classification.

Q. Now, does Richfield operate, or has it ever operated while you have been connected with it, any company-operated stations?

A. We have operated a few stations that would fall within that interpretation.

Q. Do you, that is, does your company operate any such station or stations at the present time?

A. No, sir.

Q. When did it cease operating such type of station?

A. Well, the last that I recall was possibly seven or eight years ago.

Mr. Paradise: Do I understand, Mr. Dixon, by your use of the phrase "such station" you are referring to a station of the nature as expressed by the term "company-operated station"?

Mr. Dixon: Yes.

Mr. Paradise: I see.

The Court: We are talking about the meaning of "company-operated station," as he interpreted that term.

Mr. Paradise: I see.

The Court: Isn't that what you are talking about?
The Witness: Yes, sir.
The Court: All right.

[fol. 1121] By Mr. Dixon:

Q. That would be about 1942?
A. '42 or '3, somewhere in that time.
Q. You say prior to that time, that is, prior to 1942, about 1942, and from the period of the commencement of the operations of Richfield, it operated about how many company-operated stations?
A. Oh, I don't suppose there were ever more than 30 or 40 at any one time in operation on that basis.
Q. Do you know the reason why the company ceased to operate any such stations?
A. Yes.
Q. Will you state such reasons to the court?
A. There was an operating situation developed or brought by the war, which, under the circumstances of the war, involving difficulty of management, and supervision, labor, and so forth, quickly compelled us to stop.
Q. So that since that time your company has not used such outlets, that is, company-operated stations as outlets for the sale of its petroleum products to the consumer within the area in which you operate; is that correct?
A. That is correct.
Q. Now, there are various forms of written arrangements which you do have with the operators of the retail outlets to which your company delivers petroleum products for retail purposes, are there not?
[fol. 1122] A. We have various forms that we use with what we call operators and with independent dealers.
Q. Now, what type of arrangement, if you can describe it to the court, do you have with the operator of a retail outlet where you sell or deliver your petroleum products for resale purposes to the consumer?

Mr. Paradise: I object on the ground of ambiguity,——
Mr. Dixon: All right.
Mr. Paradise: ——if the court please, and perhaps not the best evidence.
I might state to the court that we have with some care

worked out with the government a stipulation of the use of these various written forms. I would think that in the interests of expediency perhaps the stipulation should be before the court, unless counsel has some other purpose for his examination other than impeachment of the stipulation.

Mr. Dixon: Your Honor, I reserve the right to conduct my examination of this witness in my own manner, assuming the questions are proper.

The Court: Well, the last question was withdrawn.

By Mr. Dixon:

Q. I will hand you what is marked Government's Exhibit 1, and ask you what that is.

Mr. Dixon: That is rather a hard question to ask, because it speaks for itself, your Honor.

The Witness: This is our Form No. 542.

[fol. 1123] Mr. Dixon: This is a copy (handing document to the court).

The Witness: It is entitled "Service Station Lease," which Richfield uses in connection with the installation of an operator in what we call our Leased Out service stations.

By Mr. Dixon:

Q. I notice you use the word "uses." Does Richfield still use that form, Mr. King?

A. Yes, this form, possibly, with some modifications and changes is still in use.

Q. Well, those modifications and changes we may be interested in. Will you look at Exhibit 1 and state to the court how the rental to be inserted therein would be arrived at? That is, would it be a stipulated amounted?

A. Our rentals—our objective for the rental to be charged at our Leased Out service stations is established at one cent per gallon of gasoline sold from that location. The leases have called—sometimes have called for one cent a gallon, with a very moderate minimum rent, and at other times, why, the minimum rent has been established at a figure consistent with the gallonage that the station is doing times one cent per gallon.

There may be in some instance an additional rent charged where there is some unusual or extra facility at the location, such as a parking lot, or some building or facility that can be used to some advantageous purpose. [fol. 1124] But our objective is to collect a rental of one cent per gallon on the gasoline sold.

Q. Now, on this type of property Richfield may also have a lease with a third party, may they not, which provides that Richfield shall pay that party, the lessor to Richfield, a stipulated amount of rent per month?

A. Yes, sir.

Q. Is that the amount that is usually inserted in the provision of Exhibit 1 as the amount which the lessee thereunder shall pay to Richfield as rent for the property leased or described in the lease, Exhibit 1?

A. No. The rental that our operator pays has no relation whatsoever to the rent that Richfield pays to its lessor, and the rent that we pay is in the majority of cases and over all in excess of the rent that we receive.

Q. That is, by the rent you receive, you mean the amount provided here as the amount which the lessee shall pay, in addition to that which is measured by the amount of gasoline which is sold at that outlet?

Mr. Paradise: I object to that question on the ground that it is argumentative and assumes facts contrary to the evidence.

Mr. Dixon: I don't think so. This is cross examination. Will you read the question?

Mr. Paradise: Counsel states rent as being included in [fol. 1125] the price of gasoline, and I don't understand that.

Mr. Dixon: There are two provisions here, your Honor.

The Court: I know. Will you read the question again, please?

The Witness: A little loud, please.

(The question was read.)

The Witness: I think that, Mr. Dixon,——

By Mr. Dixon:

Q. Do you understand the question?

A. Yes, I understand your question. I think that Mr. Dixon has not understood my answer, your Honor.

The Court: All right.

The Witness: Our objective in what we insert in this operator's lease, our objective is a total rental of one cent per gallon, except where there is some unusual or extra facility, such as a parking lot or some other building.

The Court: Let's get down to this split rental here. There is a provision here——

Mr. Dixon: A further provision. This provision here (indicating).

The Witness: Yes.

The Court: Which has a blank where you put in another figure.

The Witness: Yes.

The Court: And then below that you also talk about additional rent.

[fol. 1126] The Witness: All right. I can explain that, your Honor.

The Court: Now, how do you do that? By what criterion do you split the two?

The Witness: All right, your Honor. I can explain that. Let's assume that this station sells 10,000 gallons of gasoline per month. At the rate of one cent per gallon that would be $100. So we will establish in the forepart of this lease here the rental at $100, and then down here in the latter part it will call for a rental of one cent per gallon on all in excess of 10,000 gallons. It is all at the rate of one cent per gallon, and the flat rental is not in addition to the collection of one cent per gallon.

The Court: In other words, the flat rent would be the actual rental if you had a certain earning capacity?

The Witness: It is a minimum rental, your Honor.

The Court: Then you add one cent, computed on the basis of gallonage beyond a certain amount?

The Witness: Yes. In other words, your Honor, if the

figure here inserted was $100, and a station operator sold 11,000 gallons, the rent would be $110.

The Court: All right. Go ahead.

By Mr. Dixon:

Q. Will you examine Government's Exhibit 1 and state to the court, if you can, what cancellation provisions are [fol. 1127] contained therein with reference to the right of either Richfield or the lessee to cancel that lease?

A. This particular document, which was in use in 1937, in July, gave the privilege of cancellation to either party, or to both parties, on 30 days notice.

The Court: Where is that clause?

The Witness: It is under "term" there, your Honor, the second paragraph.

By Mr. Dixon:

Q. It is a fact, is it not, Mr. King, that in this type of lease the term was generally a period of 12 months, subject to that cancellation provision that you have mentioned?

A. I do not know the answer to that question.

Mr. Dixon: All right. That is a good answer.

The Court: I notice that clause, Mr. King, and the clause following the gallonage contemplates a rental for a fixed period, because it gives a beginning and the ending of a term. Is that true?

The Witness: Are you referring to this, your Honor (indicating)?

The Court: I have the same thing here you have. I mean the clause opposite the "term." Here it speaks of the beginning, and again in computing the gallonage it uses a terminology that contemplates a fixed period, beginning at, and ending at. You see what I mean?

The Witness: Yes, sir. I do, sir.

[fol. 1128] The Court: So these leases were for a definite term, but you do not know what that definite term was?

The Witness: That is right. Mr. Dixon asked me if it were not true that the term was 12 months, and I said that I don't know. It could have been a period of a month, or three months, or some such period.

The Court: Well, you wouldn't be able to change possession of property of that type every 30 days.

The Witness: No, but I believe it further provides it will run along, and it will continue thereafter until cancelled by either party upon 30 days notice.

The Court: All he wanted was the minimum, if the minimum was not a year.

Mr. Dixon: That is right.

The Witness: That I do not remember.

The Court: You do not know. All right.

The Witness: You see, your Honor, that was in 1937. If you get to a little more recent time, I might remember.

The Court: All right.

By Mr. Dixon:

Q. Does this document, Exhibit 1, represent the entire arrangement between the Richfield Company and the lessee therein?

A. Yes, sir. There is no other document, nor any other arrangement, if you will call it arrangement. However, the operator, when he is installed in one of our Leased Out [fol. 1129] stations is directed as to how the station shall be operated so as to conform to our methods and procedures.

Q. I will again hand you Exhibit 1 and ask you to examine the same, and state to the court whether you find anything contained in that document with reference to the sale or delivery by Richfield to the lessee of that station of any petroleum products?

A. Will you read the question?

(The question was read.)

A. No, there is nothing contained in this lease that has anything with reference to the sale of petroleum products.

The Court: I wouldn't answer that question that way if I were asked that question. I would say that this gallonage business in the lease clearly contemplates the delivery by you or by somebody, not by you, of gasoline, on which you receive so much per gallon.

The Witness: Maybe I misinterpreted the question, your

Honor. I had reference to the fact that there is no agreement of purchase and sale in this document.

The Court: That is true. All right.

Mr. Dixon: I think the witness has answered my question, Judge.

The Court: All right. You want me to do as I do with juries, you want me to instruct myself to disregard my [fol. 1130] question, is that it?

Mr. Dixon: No, I don't think that is necessary.

By Mr. Dixon:

Q. It is a fact, is it not, Mr. King, that your company does deliver and does sell to the lessees of Form 542, Government's Exhibit 1, petroleum products?

Mr. Paradise: I must object, your Honor, on the ground that I originally mentioned, this time for lack of foundation, unless counsel identifies the time to which he refers. The stipulation which we have entered into shows that this form was used for a period around 1937. Counsel's question relates to the present. He speaks of the present.

The Court: I think if you are going to a different topic you should ask for the period, so that we may tell whether you are talking about a co-existent contract—what is the term I want? "Co-existent" is a good word—so as to see whether the contract was in force at the same time when this was in force. Isn't that what you have in mind?

Mr. Paradise: Exactly, your Honor.

Mr. Dixon: Your Honor, if I may explain my question, this is the first form used with this type of arrangement. The witness has testified that there was substantially no change in the form up to the present time. I thought I would save time by covering the whole arrangement with this document, and that is the purpose of my question.

[fol. 1131] Mr. Paradise: That wasn't the witness' testimony. He testified there have been changes, and he hasn't been permitted to explain what they are.

Mr. Dixon: Will you read the question?

The Court: Read it, please.

(The question referred to was read as follows:

"Q. It is a fact, is it not, Mr. King, that your company does deliver and does sell to the lessees of Form 542, Government's Exhibit 1, petroleum products?")

Mr. Dixon: I could change the tense there to "did sell."

The Court: Yes. "Does" would imply at the present time.

Mr. Dixon: Yes, at the present time.

Mr. Paradise: And I also think, if the court please, not to be specious, that counsel should lay the foundation as to the period during which this form was used.

The Court: Maybe the answer is "No." If the answer is "Yes," then we will have him fix the time. Go ahead. You may answer it.

The Witness: The answer is "Yes."

The Court: All right.

[fol. 1132] Q. And that it continued to sell such petroleum products to all of the lessees under Government Exhibit 1 as long as that arrangement, Government Exhibit 1, was in effect between the defendant and the lessee?

A. Yes.

Q. And that was a matter of oral arrangement, was it, Mr. King, between the lessee and Richfield at the time the lessee executed Government Exhibit 1 with Richfield?

Mr. Paradise: Object on the ground of ambiguity, if the court please. That calls for the conclusion of the witness.

The Court: Overruled.

Mr. Dixon: I think this witness has testified, your Honor——

The Court: That is all right. I don't want you to argue when I am ruling in your favor, and I don't want you to argue when I rule against you.

The Witness: Repeat that question, please.

The Court: Read the question.

(Question read by the reporter.)

A. No, sir.

The Court: All right.

By Mr. Dixon:

Q. When under Exhibit 1 did your company arrange to sell petroleum products, if it did, to the lessee of Exhibit 1?

[fol. 1133] A. When the lessee was selected as the operator of an L-O station, he is told how we expect that station to be operated, how we expect the station to be run, and he is told that he is to handle our products. There is no oral arrangement. It is a matter of our direction.

The Court: All right. Well, it is technical.

Mr. Paradise: If the court please, I think the witness' answer indicates that he thought the question related to the present time.

The Court: I think he put his own construction on the arrangement. He meant direct. It is a condition of your dealing with him?

The Witness: Yes.

The Court: In other words, what you mean to tell us is this: That when you decide to lease out the station you, at the same time, tell the man he is expected to handle your products. Otherwise you would not go to the trouble of turning valuable property over to him.

The Witness: That is correct, your Honor. It is not a case of any agreement or anything else.

The Court: You just tell him.

The Witness: We tell him.

The Court: Thank you for your forthrightness.

Mr. Dixon: You do much better than the lawyer sometimes, Judge.

[fol. 1134] The Court: He is a businessman and very forthright when it comes to being a witness. That is my experience with them.

The Witness: We are not lawyers, your Honor.

The Court: Thank you for saying that. They are more forthright than the lawyers, I often think.

By Mr. Dixon:

Q. So at the time the lessee enters into Government Exhibit 1 there is attached to that lease, is there not, Mr. King, as a condition of the lease that he purchase his entire requirements of petroleum products from Richfield?

A. That is a difficult question to answer, if I understand it. I repeat again that there is no agreement, simply a case that if he wants this lease and wants to operate this station, that he will run the station as we direct.

The Court: All right.

By Mr. Dixon:

Q. I will hand you Government Exhibit 1 and ask you to examine that and state to the court what, if anything, is contained therein with reference to cancellation by Richfield of the lease, Government Exhibit 1-B?

The Witness: Will you repeat the question, please?

The Court: I am going to call your attention to a filled-out exhibit. Had you propounded a question on it?

The Witness: He had asked me a question. I was asking it be repeated, sir.

The Court: Oh, all right.

[fol. 1135] (Question read by the reporter.)

A. This is our form 542 which was in vogue or in use in 1941. And in answer to your question, sir, the cancellation privilege has been stipulated at mutually the 24-hour arrangement.

The Court: Where is that contained?

The Witness: In the paragraph after "term," your Honor.

The Court: All right.

By Mr. Dixon:

Q. What was the reason, if you know, Mr. King, for changing of that cancellation provision as against the one contained previously in Government Exhibit 1?

A. I can't answer that question because I was not a party nor was not responsible for the change in those directions or arrangements.

Q. But it is a fact, is it not, that that 24-hour cancellation provision that you have referred to as being in Government's Exhibit 1-B, adopted in February of 1941, exists in all of the documents used by Richfield and the L-O type of station since February 1941? Isn't that true?

A. I can't say that that condition—yes. I retract that, sir. The answer is yes.

Q. I will hand you Government's Exhibit No. 2 and ask you to state to the court, if you can, what that document is?

A. This is form 1095 which was in use in December of [fol. 1136] 1945 and was used in connection with the operators of our stations classified as truck service stations.

The Court: Truck what?

The Witness: Truck service stations.

By Mr. Dixon:

Q. I will ask you to examine that document and state to the court whether it represents the entire business arrangement or arrangement of any kind that you might have between the company and the lessee who might be named therein?

A. Yes, this represents the entire arrangement we have with the operator of a truck service station.

Q. I will ask you to examine that exhibit again and state, if you can, whether you find any provision contained in said document with reference to delivery to any lessee who might be named therein of any amount of petroleum products of any kind by Richfield?

A. No, this does not make any reference to delivery of petroleum products.

Q. State, if you can and know, whether Richfield did in fact sell or deliver any petroleum products to any of the lessees who might be parties to Government's Exhibit 2, your form No. 1095?

A. Yes, we have delivered—sold and delivered petroleum products to holders of this lease.

Q. Was that a matter of another arrangement entered [fol. 1137] into between Richfield and the lessee who might be named as the lessee of any such a lease?

A. There is no arrangement between Richfield and the lessee of a truck station. The same condition prevails here as I have heretofore explained to you prevails with the operator of what we call an L-O station, namely, when arrangements are made for an operator to lease a truck station he is directed and told by us how he shall operate that station and the products that he shall purchase.

Q. It is a fact, then, isn't it, Mr. King, that any lessee

or any lease which Richfield might enter into under Government's Exhibit 2 would be conditioned upon the sale to the lessee thereof or therein of petroleum products handled only by Richfield and delivered to the lessee by Richfield?

A. I think I have answered that question, Mr. Dixon.

Q. Well, that ought to be easy, then. Is it yes or no, if you can?

A. When we arrange for——

Q. Can you answer it yes or no, first, please?

The Witness: Will you read the question?

(Question read by the reporter.)

A. If I understand your question, it is not a fact. In other words, it is not a condition. It is a direction on our part to the holder of this lease.

[fol. 1138] Q. And if that lessee did sell or accept delivery from any competitive supplier with Richfield of any petroleum products at the outlet leased to him under form 2, what, if anything, would Richfield do?

A. It would be——

Mr. Paradise: Your Honor, may I have that question? Forgive me. Had you finished?

Mr. Dixon: Yes.

Mr. Paradise: I could not hear the question. May I have it read, please?

The Court: Read it, please.

Mr. Dixon: I will withdraw the question and save time, and ask this one:

Q. I will again ask you to examine Government's Exhibit 2, Mr. King, and state, if you will, what cancellation provisions are contained therein with reference to cancellation of that lease by either Richfield or the lessee named therein or who might be named therein.

A. This form provides that Richfield, the lessor, may cancel on five days notice.

Q. Do you find any comparable provision giving the lessee who might be named therein the same right to cancel on five days notice to Richfield?

Mr. Paradise: Objected to as immaterial.

The Court: Read the question.

[fol. 1139] (Question read by the reporter.)

The Court: I will sustain the objection.

By Mr. Dixon:

Q. Now, Mr. King, I will ask you to examine again Government's Exhibits 1, 1-A through -G, inclusive, and Government's Exhibit 2, and state to the court, if you will, whether those exhibits and written forms of agreement were used by Richfield with any lessees who might be named therein during the period of time that you have been associated with Richfield.

(Witness and counsel conferring.)

The Court: All right, let us in on the conversation now.
The Witness: Will you read the question, sir?

(Question read by the reporter.)

A. Yes, sir, these forms have been in use with the operators of L-O stations for that period of time.

By Mr. Dixon:

Q. And these forms that I have mentioned deal with what you refer to as the L-O type of station?
A. Yes, sir.

Mr. Dixon: The Government offers into evidence as Exhibit 6, if that is the next in order, Schedule No. I through VII, inclusive, of the stipulation.
Does your Honor want to take a recess?

The Court: Yes. Do you want to?
Mr. Dixon: We can discuss how we will put this in with [fol. 1140] counsel.
The Court: I was waiting for a good stopping point.

(Short recess.)

The Court: All right, gentlemen.
Mr. Dixon: For the time being, your Honor, we will withdraw our offer of certain designated documents which we were going to ask be given an exhibit number for identification. Is that clear?

The Court: What was it. You said you withdraw an offer?

Mr. Dixon: No. We withdraw our designation of any document which we asked be given an exhibit number for identification at this time.

The Court: I don't remember that we have any.

(Mr. Dixon's offer read by the reporter.)

The Court: Is that what you want to withdraw?

Mr. Dixon: Yes, and ask that that portion of it be stricken from the record from there on.

The Court: All right, it may be stricken from the record.

By Mr. Dixon:

Q. Are you familiar, Mr. King, with the type of arrangement entered into between your company and the operator of retail service station outlets which is referred to by your company as the 3-C type of arrangement?

A. I believe so.

Q. Will you explain to the court, if you can, what that [fol. 1141] type of arrangement is with reference particularly to the sale to the retail outlet operator of petroleum products?

A. The 3-C proposition comprises a lease from the service station dealer to Richfield and a sublease back to him, together with a contract calling for the sale and the purchase of a stipulated quantity of gasoline.

Q. Is that one entire arrangement, that is, are those leases from the dealer to Richfield and the sublease back from Richfield to the dealer and the sales contract, which we will refer to as Government's Exhibits 4, 4-A, and 4-B, executed by Richfield and the dealer at the same time?

Mr. Paradise: May I make the same objection, if your Honor please, as to lack of foundation. I think we have a critical time period involved in each of these particular forms.

The Court: I think after this preliminary question is answered I will ask a question directed to the time.

A. I have here the operator's lease and operator's sales contract as was in use in August 1948.

Mr. Dixon: '45.
The Witness: Is that '45? I can't see, sir.

A. As in use in 1945.

By Mr. Dixon:

Q. And were the forms Government's Exhibits 3, 3-A, 3-B, 3-C, and 3-D used by Richfield under the 3-C type of arrangement prior to that time and since March and since [fol. 1142] November 1937?
The Witness: Read the question, please, sir.

(Question read by the reporter.)

By Mr. Dixon:

Q. The latter dates being the print dates contained on those exhibit forms.
A. The 3-C proposition, as we call it, did not come into use until 1945 or 1946, and these documents I have here—
Q. That is, Government's Exhibit 3, 3-A through -D, inclusive.
A. ——were used in connection with another type of lease and sublease proposition which we termed the 2-B in 1937.
Q. In other words, the 2-B type of arrangement was used up until the time Richfield adopted and used the form shown by Government's Exhibits 4, 4-A through -D, inclusive, is that correct?
A. Will you identify the 4-A? Is that the one that I——

Mr. Dixon: Just looked at.
The Witness: The one I just looked at?
Mr. Dixon: Yes.

A. The forms which I have here of print date of '37, that type of proposition we discontinued sometime around '42 or '43, and the 3-C proposition which has this print date of '45 came into general use about that same date. In [fol. 1143] between those dates we did not use this type of proposition. I am speaking of the lease and sublease, in soliciting business.

Mr. Paradise: If the court please, the stipulation to which counsel referred at the beginning of the trial and which was received with the clerk as custodian, but was not

filed, is called "STIPULATION RE INTRODUCTION OF CERTAIN EVIDENCE", and then in parentheses (Paragraph 1 of plaintiff's subpoena dated September 7 1950.) That is the stipulation between counsel consisting of some seven pages, entered into this last week and to which are attached the forms of these various types. I thought the purpose of both Government counsel and ourselves was to expedite the trial and to save the court's time.

The forms that are attached are the various print forms the pages of the stipulation stipulate as being true, for the purposes of this case, that these forms were used and the dates during which they were used, and I referred to those earlier.

I do not think it is Mr. Dixon's purpose to attempt to impeach the stipulation, but nevertheless, I feel that it would expedite the matter if all of this material were in one place, and that is the reason why we entered into the stipulation.

May I suggest that the original stipulation be filed? [fol. 1144] Mr. Dixon: Counsel may make it as a part of his case, if he cares to do so, but the government has already offered and has in evidence those forms of agreement which it wishes to have before the court, and it has not offered the entire stipulation because it does not want to increase the record beyond what it believes should be reasonably necessary to get the facts before the court.

If counsel wishes to stipulate that these forms now in evidence were used by the defendant during the periods subsequent to their print dates, counsel for the government will gladly so stipulate.

The Court: I think there is an advantage at the present stage of the case if a live witness intersperses himself between these documents with a narrative of their use. It helps the court to establish a framework.

Mr. Paradise: I see.

The Court: So that for the present we will leave the stipulation as it is, unless you want the stipulation offered as your exhibit. Then I will receive it as bearing upon the testimony testified to by this witness.

Mr. Paradise: Well, we can offer it as a part of our case. I thought maybe this would expedite the examination.

The Court: All right.

Mr. Dixon: May I have the last question, please?

(The record was read.)

[fol. 1145] The Court: Evidently there wasn't any question pending.

Mr. Paradise: I was not making an objection, your Honor, except merely offering the stipulation.

The Court: Counsel thought there was a question pending, but there was not.

Mr. Paradise: I see.

By Mr. Dixon:

A. Handing you Government's Exhibits 3 and 3-A, state to the court, if you can, Mr. King, whether the rent contained in Government's Exhibit 3 to be paid by Richfield to the lessor was the same as the rent to be paid by the lessee from Richfield in Government's Exhibit 3-A, as a matter of policy of the company.

A. I have here the lease and sublease papers that we call the 2-B proposition, which were in use in 1937 and for several years thereafter, and I cannot recall at this time that the rent paid and the rent received was identical.

Q. Well, do you know, as a matter of fact, whether it was the policy of Richfield, in negotiating these 2-B or 3-C transactions to pay the dealer the same rent on his lease to Richfield, Government's Exhibit 3, as Richfield was paid by the dealer in the sublease of that same property by Richfield to the dealer, Government's Exhibit 3-A?

A. During the period that these leases were in use, I believe that the practice varied; that sometimes the rent paid and the rent received were the equivalent, and in [fol. 1146] other cases the rent paid by Richfield was more than the rent received by Richfield.

The Court: You mean the total, both the fixed amount and the additional gallonage, or just the fixed amount?

The Witness: Your Honor, the gallonage feature—I would suggest that you do not confuse the gallonage feature that we discussed in connection with Form 542 with this document here.

The Court: I see.

The Witness: This involves Richfield's leasing a station

from an independent dealer, and leasing it back to him, concurrently with a sales contract. I think our practice——

The Court: I had forgotten you had switched to another form.

The Witness: I think our practice varied during those years, and I can't recall exactly, but substantially as I have testified.

The Court: All right.

By Mr. Dixon:

Q. Do you know what the policy of Richfield is today with reference to the rentals to be paid the operator under leases of the type of Government's Exhibit 4 through 4-A to D, inclusive?

Mr. Paradise: Object on the ground of lack of foundation, if the court please. Those forms have not been used [fol. 1147] since 1948.

The Court: We will find out. If they are not in use, then the policy is not in vogue. Go ahead.

The Witness: I cannot correctly answer that question.

By Mr. Dixon:

Q. Are all of the 3-C form of arrangements set forth in Government's Exhibit 4 through 4-A to D, inclusive, subject to your approval?

A. My personal approval?

Q. Well, if you delegate it to someone else, it would still be yours, I assume. Subject to the approval of your office?

A. The policy directing the negotiation of these propositions, yes, is subject to my over-all approval.

Q. Is that true, also, with reference to any of the leases which might be executed by Richfield under the L-O type of arrangement, exemplified by Government's Exhibits 1 through 1-A to G, inclusive?

A. Yes, I would have the final approval of the policy governing the writing of the 542 leases with service station operators.

Mr. Paradise: May I ask that the question be stricken, your Honor please, and for the purpose of clarity of the

record I should insist upon the objection of lack of foundation. This stipulation shows that the forms referred to by counsel in his last question have not been used since 1937, [fol. 1148] at least that certain of them haven't, and the question is: Does Mr. King, in his personal capacity as vice-president, approve these. I think we are getting a confused record unless a foundation is laid.

Mr. Dixon: I don't think the question is improper. May we have it read? It relates only to whether this witness approves the L-O type of arrangement, whether it is subject to his approval before it becomes effective.

Mr. Paradise: But you mentioned Exhibits 1, 1-A through 1-G.

Mr. Dixon: Well, as exemplified by that type of arrangement. Admittedly, he could not approve it while he was acting as vice-president.

The Court: That question assumes that they are still in vogue.

Mr. Dixon: Some of them are, Judge.

The Court: Then if that does not apply as to all of them, I will sustain the objection to the question, because an answer to the question would not clarify the matter.

Mr. Dixon: All right. I will withdraw the question.

The Court: You can ask him to segregate those that you think are still in vogue, and then you can ask him as of today as to those which are in vogue if he has the approval of them. I think you had better reframe your question.

Mr. Dixon: I will be glad to, Judge.

By Mr. Dixon:

[fol. 1149] Q. What form numbers are used by Richfield, and have been used by Richfield since you have been vice-president in charge of sales, with reference to the L-O type of arrangement, Mr. King?

A. This form that I have here, No. 542, of print date of 1-49, substation lease, your identification No. 1-G, is the form currently in use with the operators of L-O service stations.

Q. Before that lease can be executed and become final by Richfield, it is subject to your approval, is it, Mr. King, or the approval of your office?

A. We have a—there has been established, rather, a line of authority for the approval of various documents which the corporation uses or negotiates, and this, under my authority or approval, or authority I have delegated, this document here is negotiated and executed provided there are no deletions or changes by the division managers.

Q. Is his action in executing that in any way subject to your final approval, or the final approval of your office?

A. He executes——he can execute this document within the boundaries of the policy as laid down by my office.

Q. What do you mean by "policy"? The policy that you have previously described, that the L-O type of lease may not be entered into with any lessee except on the conditions that you have described?

[fol. 1150] A. Yes, that I have heretofore described, and including our policy with respect to the rent to be collected from that lessee.

[fol. 1151] Q. And with reference to this L-O type of arrangement 1-G what is the policy of your company with reference to the execution of that type of a form by a lessee on the purchase by the lessee of his requirements of automotive accessories that are handled or sponsored by your company?

The Witness: Would you read that question, please, sir?

(Question read by the reporter.)

A. When we select an operator for an L-O station, as I have mentioned heretofore, he is instructed beforehand as to the manner in which he must operate this station, and among these instructions we provide him with what we call a balanced list of TBA items that we recommend be handled, and specifically we point out to him that——we point out to him and list for him those TBA items which are approved for sale to Richfield's customers who hold a Richfield credit card. This is in the matter of instruction by our representative who has made the arrangements with the operator, and in order to better accommodate or in order to accommodate the demands of Richfield's trade we request that he handle the approved items.

Q. And that is made, is it not, a condition of the lease which he may enter into under the form Government Exhibit 1-G?

A. He may——

[fol. 1152] Q. Can you answer that yes or no, Mr. King, please?

The Court: He objects to that form. He likes to make it stronger than your question which asks isn't it a condition.

The Witness: I can't answer your question as you would like to have me answer it.

Mr. Dixon: All right. Will you answer it in your own way, then, Mr. King?

A. For this reason, because we had numerous instances where the operators have not carried——

The Court: It means is that a basis on which the deal is started. Whether they comply with it or not is not involved.

The Witness: All right. Read that question, please.

(Question read by the reporter.)

The Court: As far as you are concerned.

A. That is not an iron-clad condition, no.

By Mr. Dixon:

Q. What are the exceptions to it, Mr. King?

A. The operator has and they do handle many items of TBA that are in addition to our approved items of TBA. He often does not handle the complete items included in the approved list, and I believe that generally there are many exceptions along those two lines.

The Court: They relate merely to the size of his inventory, do they not?

[fol. 1153] The Witness: What did you say, sir?

The Court: They relate merely to the size of the inventory, do they not?

The Witness: That would be——

The Court: Both as to numbers——

The Witness: Numbers and the variety.

The Court: And the variety, that is it.

By Mr. Dixon:

Q. But if the lessee under Government Exhibit 1-G wishes to handle any automotive accessories at the outlet leased to him under that form and Richfield has contracts with suppliers of such items, he is expected, is he not, to acquire them through the Richfield source of supply?

Mr. Paradise: I object to that as calling for the conclusion of the witness in the form in which it is framed.

Mr. Dixon: It is.

The Court: Well, overruled. Go ahead. I think he has answered that question.

Mr. Dixon: I think he has, too, Judge.

The Court: The reason of the policy change. Go ahead.

The Witness: Would you read the question, sir?

(Question read by the reporter.)

A. Yes, we would like to have him acquire those items through that source of supply.

By Mr. Dixon:

Q. Is that made clear to the lessee at the time he enters into Exhibit 1-G?

[fol. 1154] A. He is informed of the TBA distributor handling our approved items and who is in a position to serve him.

Q. And is he told that he is expected to get any TBA requirements that are contained in the Richfield list of TBA items through the Richfield source of supply?

A. Well, our representative handling this particular unit or station instructs him, as I have told you, as to our approved list of TBA items which are authorized for sale on our credit cards, and he can or cannot, as he sees fit to, buy those items from the distributor who is functioning in that particular area.

Q. Yes, I understand that. But suppose he wants to buy some tires or tubes and batteries and the Richfield source of supply handles tires, tubes, and batteries, is the lessee under the L-O type of arrangement, Government's Exhibit 1-G, expected to acquire them through the Richfield source of supply, Mr. King?

A. If he wants to stock those items of TBA, why, we

would like to have him buy them from the designated distributors.

Q. And you make it clear to any lessee under 1-G, do you not, at the time it is entered into by the lessee that that is what is expected of him?

A. That is correct.

Q. Now coming back to the 3-C type of arrangement, I believe you testified that that type of arrangement must [fol. 1155] be approved by your office or yourself before it becomes the action of Richfield, is that correct?

A. Yes, it must be approved by those in authority who have been delegated the responsibility for approving them.

Q. And those are persons that are under your direct supervision?

A. Yes, sir.

Q. I will hand you Government's Exhibit No. 4 and ask you if anything is contained therein with reference to the sale of automotive accessories on the property or in the property that may be covered by that lease?

And, your Honor, for your information, this is the lease under the 3-C deal from the operator to Richfield.

The Court: All right.

Mr. Dixon: In 1945.

A. You refer, Mr. Dixon, to all three documents that make up the 3-C proposition. I have only the lease here.

Q. Yes. I am asking you if you find anything in that lease to you from the dealer or from the lessor who becomes the dealer under the 3-C arrangement, anything with reference to the use or sale of TBA items on the property covered by the lease.

Mr. Paradise: Which exhibit does that refer to, Mr. Dixon?

Mr. Dixon: 4.

[fol. 1156] Mr. Paradise: 4 alone?

Mr. Dixon: 4 alone.

The Witness: What is the question again?

(Question read by the reporter.)

A. In this form I have here of print date which was in use in November of 1945, paragraph 4 does state that he would have that right, or this lease to Richfield gives

Richfield the right to store and distribute automobile accessories in its function as a service station.

Q. It is a fact, is it not, Mr. King, that Richfield never operates any retail outlet under that lease, certainly as long as the lessor therein is the lessee under this sublease, Government's Exhibit 4-A?

A. No. We would never operate any station covered under a 3-C proposition if the lessor was not the operator of the station.

Q. So that that is the only time that that arrangement is in effect, is that correct? By "arrangement" I mean this lease, sublease, and sales arrangement with the lessee and lessor, too? Do you understand my question?

The Witness: I do not believe I quite understand the question, sir.

Mr. Dixon: All right, I will withdraw it.

Q. Do you know of any situations in which the Richfield Company has ever operated a station or outlet under the Government 4 type of a lease?

[fol. 1157] A. By other than the lessor to Richfield?

Q. Yes.

A. No.

Q. If there were any such situations, would they come to your attention as being unusual in the course of your operations as vice-president of the company in charge of marketing?

Mr. Paradise: Oh, I say that that is argumentative and contrary to the evidence.

Mr. Dixon: All right, I will withdraw it.

The Court: He has told you he doesn't know anything about that, and you ask him if it existed, would you know?

Mr. Dixon: I agree, your Honor, the question was argumentative.

The Court: He has answered.

By Mr. Dixon:

What cancellation rights, if any, do you find that the lessor has under Exhibit 4-A?

Mr. Paradise: Exhibit 4-A?

Mr. Dixon: 4. I am sorry. Not 4-A.

A. I would have to refresh my memory with respect to the rest of this document.

Q. All right. I won't ask you to do that at this time. Do you know what cancellation rights, if any, Richfield has under that lease?

Mr. Paradise: Well, I think the document speaks for [fol. 1158] itself, your Honor.

Mr. Dixon: I am asking this witness, your Honor.

Mr. Paradise: He is calling for interpretation of a written contract.

The Court: All right, go ahead.

A. As I recall, there is no cancellation privilege there. The document is as broad as it is long. It is a lease from Richfield and a lease back for the same period of time.

The Court: That is right. In other words, clauses like the ones you talked about earlier in the day as to the L-O form where there was a 30-day cancellation clause, then changed to a 24 hours, do not exist in this contract?

The Witness: No, they do not, your Honor.

The Court: In other words, you take the lease—let us use the word "prime." We are back in wartime. Let us talk about the "prime." You take the lease from your prime lessor for a definite term and then you pass it down to your lessee for the same term?

The Witness: That is right.

The Court: Is that true?

The Witness: That is correct.

[fol. 1159] The Court: All right. Is this a good stopping point?

Mr. Dixon: Yes, it is, Judge, because I can't finish.

The Court: Oh, no. When you go slower, I will prod you, but not the first day anyway, not in a case which will take several weeks to try.

Mr. Dixon: I think this is as good a place as any to call it a day.

The Court: All right, Mr. King.

The Witness: Thank you, your Honor.

(Witness temporarily excused.)

The Court: Do you have any witnesses you want me to instruct to return, or will you take care, in a case of this character, of your own witnesses?

Mr. Dixon: I think we can take care of them today, Judge. We have, unfortunately, quite a few that have come from outside of the state.

The Court: We will put them on and get them out of the way as quickly as we can.

I want to explain to those who come from outside the state that we try to co-operate. This case was set for this day. I promised counsel we would go to trial today, and if you look at the record you will find that we worked very long hours in the last few weeks to clear the calendar. It is impossible to put everyone on at the same time. Those of you who are businessmen know when you come into the [fol. 1160] court room that we cannot run it like a factory, because there are too many human elements that are involved. So you are under subpoena, and you have to come back, but it is the aim of counsel for the government and counsel for the defendant not to inconvenience you any more than is necessary. You will be called as quickly as we can get around to you. Some of you may wait around for several days until your turn comes. The thing is that we have to draw a frame, draw a pattern, and it is necessary to do the groundwork so that an understanding narrative can follow.

Where it is absolutely urgent and it can be done, we can even put you on out of order, but everybody has to be patient in a case of this character, which takes many, many months of preparation and takes many days to present to the court. But we will see that we work along with one another. We have to consider the needs of the litigation and the needs of the particular witnesses, too. Ultimately everything must be subservient to the needs of the litigation.

I assure you no one is just deliberately making you sit around longer than you need to, in order to use you in the case. The moment they are satisfied they can put you on, they will. And if they are satisfied that they do not need you, they will send you home.

With that statement, I will instruct all witnesses under subpoena who are in the court room to return tomorrow [fols. 1161-1164] morning at 10:00 o'clock.

(Whereupon, an adjournment was taken at 5:00 o'clock p. m., Tuesday, May 8, 1951, until 10:00 o'clock a. m., Wednesday, May 9, 1951.)

[fol. 1165] Wednesday, May 9, 1951. 10:00 A. M.

The Court: All right, gentlemen, cause on trial.

Mr. Dixon: Mr. King, may we have you back on the stand, please?

W. G. KING, JR. (Recalled)

Direct Examination—Resumed.

By Mr. Dixon:

The Clerk: You have already been sworn, haven't you?

The Witness: Yes.

The Clerk: You are W. G. King, Jr.?

The Witness: That is right, sir.

The Clerk: Just be seated.

By Mr. Dixon:

Q. Mr. King, I will hand you Government's Exhibit 4-A and ask you to examine the same and indicate, if you can, whether that document contains any provision with reference to the subleasing of that property by the lessee.

If your Honor cares for a copy of this?

The Witness: 4-A, yes.

Mr. Dixon: I have one here for you, Judge.

The Court: Oh, that is all right. Go ahead.

Mr. Paradise: I might indicate to the court that we will be perfectly willing to stipulate with counsel for the Government as to the terms of the written lease, if it will expedite the trial time. I do not believe this witness is [fol. 1166] familiar or that it—it is a burden to look through all the terms of a finely printed instrument of this sort.

The Court: If the witness cannot answer the question, perhaps it will result in a stipulation.

The Witness: Would you read the question, please?

(Question read by the reporter.)

A. This is the form that was 668, bearing a print date of 11, '49.

Mr. Dixon: '45.
The Witness: '45.

By Mr. Dixon:

Q. And that is the sublease back from Richfield to the operator under the 3-C arrangement that we referred to yesterday?

A. Yes, sir.

Q. And do you find any provision in that lease, Exhibit 4-A, of the type that I mentioned?

A. Well, it provides for the leasing of the station back to the operator. It provides for leasing the property back to the operator or the lessor.

Q. Did you understand my question, Mr. King?

A. Possibly I didn't.

Q. Directing your attention to paragraph 9 of Exhibit 4-A, is it your understanding that that provision gives Richfield any right at all to do anything?

Mr. Paradise: I must object to questions along this line, [fol. 1167] if the court please. He is asking the witness for a legal interpretation of a written instrument. I think that that is hardly proper examination.

Mr. Dixon: I realize it is, your Honor, and that was not the first question I asked but the witness apparently could not answer that.

The Court: I will sustain the objection to it. I have no objection to asking questions as to the presence of particular clauses in a particular contract, because they may form the basis of further inquiry as to whether that could be done under the contract. But a general question of the type propounded now is not fair to the witness, because it asks him to say in a summary fashion whether any rights are given or not. I will sustain the objection.

By Mr. Dixon:

Q. Do you know the purpose for the insertion in that form 4-A of paragraph 9, Mr. King?

I am sorry, Judge, I do not seem to have an extra copy of that.

Mr. Paradise: Does counsel refer to the paragraph beginning "Lessor warrants that"——

The Witness: No.

Mr. Dixon: No.

Mr. Paradise: Then I must have the wrong form.

A. Well, I can't see any other purpose than to sublease the premises back to the individual who is the lessor in this [fol. 1168] case.

The Court: Well, of course, and tie them to your products, isn't that it?

Mr. Paradise: Pardon?

A. The paragraph that Mr. Dixon refers to here makes no reference. I will read it.

The Witness: (Reading.)

> "This lease shall not be assignable, voluntarily or by operation of law, nor shall lessee sublet any part of the demised premises without the written consent of lessor first having been obtained. This lease shall not become an asset of the estate of lessee but shall terminate on his death."

The Court: You were entering into a relationship—we will call it a nameless relationship—a nameless relationship of a personal nature, and you express the rights you acquired under the lease, at the same time tying the man to certain conditions and obligations. And you wanted to make sure that you tied him and not somebody to whom he might sell, or even his heirs when he is dead. Isn't that true?

The Witness: But I would like to point out here, that in addition to this document, we entered into an agreement of sales.

[fol. 1169] The Court: Certainly, certainly. We are aware of that. But that is the first——

The Witness: I would say—pardon me, sir.

The Court: That is the first contract that related to it.

Mr. Dixon: May I interrupt, Judge? This is the sublease back from Richfield to the dealer.

The Court: Yes, that is right. I understand that. That is why I struck out——

Mr. Dixon: After the dealer has leased his property to Richfield under Exhibit 4.

The Court: Yes, I understand that.

[fol. 1170] By Mr. Dixon:

Q. Can you still answer my question, Mr. King?

A. Would you read that question, sir?

(The question was read.)

The Witness: Well, I can only answer that I think the paragraph speaks for itself.

By Mr. Dixon:

Q. Thank you. Now, this Exhibit 4-A is executed by the operator at the same time he executes a written sales agreement, is it not?

A. The three agreements which make up a part of this proposition are all executed simultaneously, yes.

Q. And the agreement which is executed by the operator with Richfield at the same time exhibits 4 and 4-A are executed is Government's Exhibit 4-B, is it not?

Mr. Paradise: Object on the ground of lack of foundation, if the court please. I would like to have the time fixed, as to the time when the instruments are being used as contracts.

Mr. Dixon: That is '45.

The Court: I think we are talking about documents that were executed as a series at or about the same time.

Mr. Dixon: That is right, Judge.

Mr. Paradise: My objection, if the court please, is that the entire group of documents, Government's Exhibits 4, 4-A and 4-B, have not been used since 1948, as the government knows.

[fol. 1171] The Court: That is all right.

Mr. Paradise: And the question as framed relates to the present time.

The Witness: This document, Form 783, bearing the date of 11-45 is the operator's sales contract, which is executed simultaneously with the lease and sublease we have discussed heretofore.

By Mr. Dixon:

Q. Now, directing your attention to paragraph 12 of Government's 4-A, is 4-B the agreement, the type of agreement that is referred to in that paragraph?

A. The paragraph you refer to is what?

Q. 12 of 4-A.

Mr. Paradise: May I suggest to the court that I am experiencing the difficulty of confusion in the exhibits, in view of the fact that this is a 3-C deal, and we have an exhibit 3-C, so I am confused. May I ask the question be read again?

(The question was read.)

The Witness: The answer is "Yes."

By Mr. Dixon:

Q. Now, directing your attention again to paragraph 4-B, do you find any provision contained therein with reference to the amounts of petroleum products that shall be purchased by the operator or other party to that exhibit from Richfield?

A. You refer to paragraph 4-B. You are referring to [fol. 1172] Exhibit 4-B, are you?

Q. Did I say "paragraph"?

A. Yes, sir.

Q. I am sorry. I am asking if you find anything in Exhibit 4-B dealing with that.

Mr. Dixon: I will give you my copy, Judge.

The date of that is '45. These are all in '45.

The Witness: This agreement, dated 11-45, provides in paragraph 1 for the buyer's entire requirements of the following automotive products.

By Mr. Dixon:

Q. Automotive petroleum——

A. Automotive petroleum products.

Q. This was the form which was adopted by the company and put into use in October or November, of 1945, Mr. King?

A. This form was in use in 1945. I believe that was the first time it was used, in that year.

Q. Now, I believe you testified yesterday that prior to this date, that is, November, 1945, you used what was called a 2-B type of arrangement, which involved the lease from the dealer or operator to Richfield, the sublease back, and a sales contract, such as was set forth in Government's Exhibits 3. Is that correct?

A. Yes. We had a proposition called the 2-B, as I testified, that was in use in 1937. However, it was discontinued, I believe I testified yesterday, along in 1941 or '42.

[fol. 1173] Q. But the provision that you have just referred to as being in Exhibit 4-B, as the entire requirements provision of that exhibit, was also contained in the 2-B type of arrangement between Richfield and the operator, was it not?

A. I couldn't answer that until I could inspect the 2-B document. It has not been in use for many years.

Q. Do you know what the policy was of Richfield with reference to the sale of petroleum products to the outlets that were handled on the 2-B and the 3-C type of arrangement?

Mr. Paradise: I object to the question on the ground that counsel is trying to examine the witness concerning the provisions of a written contract, Government's Exhibits 3. I think the witness' attention should be directed to the exhibit.

Mr. Dixon: I am asking if he knows, and this witness is the vice-president in charge of sales, and so forth. The policy, Judge. We will have the question read.

(The question was read.)

Mr. Paradise: I think counsel's question is confusing and unfair to the witness.

The Court: At the time they were used?

Mr. Dixon: That is right.

The Court: If you will so modify the question.

[fol. 1174] Mr. Dixon: At the time they were so used, certainly.

Mr. Paradise: Counsel assumes this witness was vice-president in charge of marketing at the time, and he is talking as to a period prior to 1947.

The Court: Mr. Paradise, by relating it to the time used the witness has an opportunity to answer. He can say he

was not vice-president and doesn't know. By so modifying it, I avoid the objection to the question.

As so modified, you can answer the question.

The Witness: Yes, your Honor. The 3-C proposition——

Mr. Dixon: Now, I don't want to interrupt.

The Court: Please don't interrupt.

Mr. Dixon: I am sorry.

The Court: Give him a chance to answer.

The Witness: Thank you, sir. The 3-C proposition and the operator's sales contract which we have read here calls for his buying his entire petroleum requirements. The 2-B proposition which I have pointed out was discontinued in 1941 or '42, and I haven't seen a copy of it recently, and I cannot say just what it did call for.

The Court: All right.

By Mr. Dixon:

Q. Now, I will hand you Government's Exhibit 4-D, the same being Richfield's form 668, dated September, 1948, and ask you to examine the same and state to the court what change, if any, was made in that exhibit, as compared [fol. 1175] with Exhibit 4-B, with reference to exclusive or entire requirements of the operator.

Mr. Paradise: I don't believe I have a copy of that exhibit, Mr. Dixon. May I see it?

Mr. Dixon: 4-D.

(Handing document to counsel.)

Mr. Dixon: I find we have so many forms, Judge, that I made an error in describing my form. It is 4-C, and not 4-D.

The Witness: Will you read the question, please?

(The question was read as follows:

"Q. Now, I will hand you Government's Exhibit 4-C, the same being Richfield's form——")

Mr. Dixon: Form 783.

(Continuing reading of question:——"Form 783, dated September, 1948, and ask you to examine the same and state to the court what change, if any, was made in that exhibit, as compared with Exhibit 4-B, with refer-

ence to exclusive or entire requirements of the operator.")

The Witness: This document, 783, under print date of 8-48, provides that the buyer shall purchase a minimum quantity of gasoline, lubricating oils and greases, which the seller agrees to supply. It also provides a maximum quantity of gasoline—or, provides for the insertion of a [fol. 1176] maximum quantity of gasoline, lubricating oils and greases, which is the limit of the obligation of the supplier. In other words, this document provides for the purchase and sale of a specified quantity of petroleum products. [fol. 1177] The Court: Well, that obligation works both ways. You obligate yourself to furnish him that maximum, but you do not say that he can have more.

The Witness: This agreement, your Honor, provides for a quantity of petroleum products.

The Court: The point is, you say you obligate yourself to give him that maximum, but he also obligates himself to take that amount, regardless of the quantity sold.

The Witness: Yes, sir, the minimum quantity here, your Honor, is a quantity that he obligates himself to take.

The Court: That is right.

The Witness: And we obligate ourselves to deliver. What did you say, sir?

The Court: Regardless of his requirements, he is required to take a minimum?

The Witness: Yes, sir.

The Court: And you obligate yourself to give him this minimum?

The Witness: Yes, sir, regardless of his requirements. He may buy more than that amount, and we restrict the quantity that we will sell him.

The Court: That you will give him?

The Witness: Yes, sir.

The Court: That is right.

By Mr. Dixon:

Q. At the time this change was made in the provisions [fol. 1178] of paragraph 4-C, as compared with the provisions of paragraph 4-B, both paragraphs of those exhibits

—I mean Exhibits 4-C and 4-B—were any instructions given to the district supervisors or any of the field representatives of Richfield as to how the figures to be inserted in paragraph 1 would be determined or arrived at?

A. Our representative who had the responsibility of negotiating these contracts had instructions that the quantity of gasoline, that is, the minimum quantity of gasoline which was to be inserted in this contract was not to exceed 85 per cent of the known or actual sales of the customer.

The Court: Well, the paragraph which followed the enumeration which indicates that the quantities are to be based—while it relates to separate quantities, it says that it is to be based upon the previous business experience by the station, isn't that true? Read that paragraph that follows the enumeration with the blanks.

The Witness: Yes, sir.

> The Court: "the aforesaid quantities will be proportionately reduced for said months based upon previous business experience of buyer's station or of business generally in the vicinity in the event Buyer's station has had no previous business experience."

So the entire quantities, both the maximum and the mini- [fol. 1179] mum, were related to what business he had done before, isn't that true?

The Witness: Not entirely so, your Honor. In the first place, the minimum fixes a monthly minimum. That was arrived at in the manner I have recently described, namely, that the quantity to be inserted there would not exceed 85 per cent of the customer's known sales.

The Court: That is right.

The Witness: Now, the next paragraph that you refer to provides that, due to climatic conditions. In other words, this minimum, you understand, is a monthly minimum.

The Court: That is right.

The Witness: The customer's requirements might be more or less in the month of February than in July, and that paragraph which you refer to provides that they can be raised or lowered proportionately.

The Court: But in putting in the amount—let us call it a "quota." Let us put in a new word and get away from

"requirement," just as we want to get away from "agency." We will have the word "nameless" for the relationship, this nameless relationship, and then use the word "quota." In fixing the quota that you agree to sell him and which he agrees to take, you bear in mind that he has done business at that corner before, his intake before, isn't that true? Well, all right. Supposing you are establishing a new station. Let us ask: Supposing you are establishing a new station at [fol. 1180] a new corner, then upon what would you base your minimum and maximum?

The Witness: Yes, I believe I can explain that, your Honor. First, in answer to your question, if it were a new station with no previous sales experience, our representative was instructed to arrive at with the dealer on a figure that would be mutually acceptable as to what his estimated sales might be, and then the figure to be inserted in the contract would not exceed 85 per cent of that estimate.

The Court: All right.

The Witness: Now, in the case of a station already established we, of course, would have the benefit of knowing what —we could examine the dealer's records along with him as to what his past sales had been, and we will assume that they had averaged 5,000 gallons of gasoline per month. Then the figure to be inserted in that contract would be 85 per cent of 5,000 gallons.

The Court: All right. But all of them ultimately were 85 per cent of a figure that represented either prior sales or what you thought the sales should be in case of a new station, isn't that right?

The Witness What we in conjunction with the dealer thought. That was our practice at that time, your Honor.

The Court: Well, many a time you bought out a station occupied by someone else. I know you have done it in our [fol. 1181] neighborhood. I know you bought out a Texaco on Hollywood Boulevard—no, at Sunset Boulevard, that we were trading with, bought the Texaco and tore it all out and put in a bigger establishment. There, if you could have had access to the Texaco figures, you might base it upon what figure the man did and hope you will do better, isn't that true?

The Witness: Yes, that possibly would be, your Honor, except if we were to purchase a dealer's station such as we

are talking about here, then that would mean, of course, that the seller or the former lessor would undoubtedly not have anything to do with the operation.

The Court: That is right, because you put your own man in it.

The Witness: That is correct.

The Court: All right.

By Mr. Dixon:

Q. So that under this paragraph 1 of Government's Exhibit 4-C the operator was to purchase as a minimum from Richfield 85 per cent of the estimated gallonage as set forth in the figures in any contracts of that type that were entered into——

Mr. Paradise: Objected to, if your Honor please, on the ground that——

By Mr. Dixon:

Q. ——between the operator and the dealer, is that correct?

May I finish my question, please?

[fol. 1182] Mr. Paradise: Forgive me. I am sorry, Mr. Dixon. Had you finished your question?

The Court: He had not finished it and he lost track of it, so we just start over again.

Mr. Paradise: I am sorry, Mr. Dixon.

The Court: Do you want to start over again or shall we have that portion read, because you are assuming something the witness did not testify to?

Mr. Dixon: I think we had better have it read.

(Question read by the reporter.)

Mr. Paradise: I object on the ground that it is contrary to the witness's testimony.

The Court: It is his interpretation of the witness's testimony.

Mr. Dixon: That is right.

The Court: I do not think this witness is going to be caught into any admissions he does not want.

Mr. Paradise: I agree with that, your Honor.

The Court: That is a compliment. You did not get it.

The Witness: Oh, thank you. Thank you very much, sir. I don't get many of those, your Honor.

The Court: All right.

The Witness: Do you want me to give a reply to that, sir?

The Court: Yes.

A. That is not correct, Mr. Dixon. Your question is not [fol. 1183] correct. I would like——

Mr. Dixon: I mean I want to get your answer, Mr. King, if I can.

A. Well, the answer is no to your question.

The Court: All right. Now, just a minute. If you want to explain your answer, all right. If you are satisfied with a negative answer, we will let it stand and let him try another one.

The Witness: I would just as soon explain.

The Court: Go ahead.

The Witness: This figure that is inserted in the contract represents the amount that the dealer obligates himself to purchase from Richfield. He has no obligation to purchase any quantity in excess of that. However, he may purchase additional products if he so wishes up to the maximum figure as inserted in the contract.

The Court: In other words, your interpretation of the contract is, between the minimum and the maximum lies a voluntary choice on his part?

The Witness: Yes, sir.

The Court: That if he wants to buy them, you will furnish them?

The Witness: That is right, sir.

The Court: If not, he can stop with that?

The Witness: Yes, sir.

[fol. 1184] The Court: I see. All right.

By Mr. Dixon:

Q. Handing you Government's Exhibit 5, the same being your No. 543 dated July 1937, entitled "Sales Contract," I direct your attention to paragraph 1 of that exhibit.

The Court: What exhibit are you talking about now?

Mr. Dixon: 5, Judge. I have a copy here for you.

The Court: Before we leave that let me ask one question. The type of contract we were just talking about, when a

station is contracted and the sales contract is entered into, the physical equipment, the number of pumps, for instance, from which gasoline is dispensed is fixed by the leasehold or the paper under which he holds the station, isn't that true?

The Witness: I don't think that the documents that we have discussed make any reference to the number of pumps at all, your Honor. In other words, we are talking about the sale of a fixed quantity.

The Court: Yes. But I mean either in that or in another document the physical property has already been tied by a contract which describes the equipment at the end?

The Witness: Oh, there might be in the case of a lease and sublease an exhibit A attached as a matter of record; in other words, the property we lease and the property that we lease back.

The Court: That is right.

[fol. 1185] The Witness: In case when the proposition has been terminated, why, the property can be accounted for.

The Court: Yes.

The Witness: But there is nothing that restricts the sale of the gasoline through the equipment that is in that station, the pumps, we will say.

The Court: Yes.

The Witness: Or the storage in the tanks. There is nothing to my knowledge in those instruments. We simply obligate ourselves to sell a specified amount of gasoline.

The Court: Yes. Put it the other way: Is there in any of these agreements a provision that he can increase his capacity, that he can increase his tankage by building or adding pumps without consulting you?

The Witness: To my knowledge, your Honor, there is nothing in any of our propositions that would restrict him making any changes whatsoever that he would want to make.

The Court: I see. All right, go ahead.

The Witness: Will you read the last question, please?

The Court: Well, it was answered. There wasn't any.

The Witness: This is a new one, sir.

Mr. Dixon: Before we get to the answer, Judge——

The Court: I wanted to tie that up.

Mr. Dixon: Yes. Maybe I can withdraw it, Judge. I

think I know what you have in mind and I might ask some [fol. 1186] further questions along that line. But go ahead with the question, Mr. King.

The Witness: Would you read the last question?

The Court: Read the question Mr. Dixon asked.

(Question read by the reporter as follows:

"Q. Handing you Government's Exhibit 5, the same being your form No. 543 dated July 1937, entitled 'Sales Contract,' I direct your attention to paragraph 1 of that exhibit.")

The Court: I didn't think he had completed it. That is why I stepped in. Go ahead.

By Mr. Dixon:

Q. (Continuing) ——and ask you whether or how the maximum, if you know—how the maximums and minimums to be purchased by the operator who signs Exhibit 5 are determined or were determined?

A. This form of date 7-37, if I recall correctly, was used in connection with—I believe it was used in connection with the 2-B proposition which was in effect in 1937, and the quantities at that time were arrived at by mutual agreement between our representative and the dealer.

Q. Were they arrived at in the same manner, that is, on estimating the gallonage of the station that was subject to that sales contract, as were the amounts in Exhibit 4-C that you have just referred to?

A. No. At that time our representatives did not have [fol. 1187] the instructions that they had that I recently gave you in connection with Exhibit 4-C. This is back in 1937, and it is my recollection that the quantities to be inserted in there were arrived at, as I say, by mutual agreement between the dealer and our representative, whatever amount they mutually agreed upon.

[fol. 1188] Q. So that no instructions, to your recollection, were given to any of the representatives of Richfield when they went out to secure the execution of Exhibit 5, with reference to the manner in which the maximum and minimum amounts provided for therein were to be arrived at; is that correct, Mr. King?

A. That is correct insofar as it pertains to instructions in 1937, yes, sir.

Q. Now, that same provision, that is, as is set forth in paragraph 1 of Exhibit 5, was contained in all of the other dealer arrangements or dealer sales contracts that were entered into by Richfield after July, 1937, and up until the present time, were they not, Mr. King?

Mr. Paradise: Objected to on the ground that it does not direct the witness' attention to a particular type of station. As the court knows, we have three different types involved.

Mr. Dixon: If the court please, I am asking some leading questions. They are rather involved.

The Court: It is not a question of leading. It is that they are like a Mother Hubbard, they cover too many things. You ought to differentiate.

Mr. Dixon: I am very glad to do so, your Honor, and I might explain the only reason for asking this type of question is that presumably, and it is my understanding, Mr. [fol. 1189] King was a district supervisor, and now is vice-president in charge of marketing and is familiar with these things, and I thought I would save time by not having to refer to all of the five exhibits.

The Court: If he can answer. Can you answer that question without referring to it in a specific way, or shall we have it broken up?

The Witness: Will you read the question?

(The question was read.)

The Witness: The answer is "No" to your question.

By Mr. Dixon:

Q. Handing you Government's Exhibit 5-B, the same being your Form 337, dated June, 1938, the sales contract; Government's Exhibit 5-D, your Form 337, dated August, 1948, the same being the sales contract; and Government's Exhibit 5-G, your Form 337, dated February, 1951, entitled "Sales Contract," I will ask you to examine the same and state to the court what the differences were that you find, if any, with reference to the amounts of gasoline or petro-

leum products to be purchased by the other party to those agreements with Richfield.

A. With respect to Exhibit 5 I have recently—I have answered that question, or answered the question as to how the quantities were arrived at in that agreement.

Q. Yes.

A. We now come to Exhibit 5-B, and Exhibit 5-B, which [fol. 1190] bears the date of 1938, Form 337, at that time it was our practice to insert a quantity of products to be purchased that was mutually agreed upon between our representative and the customer.

Q. That is paragraph 1 of that exhibit; is that correct?

A. Paragraph 1, yes, sir. We now come to Form 337, under date of 8-48, Exhibit 5-D, and it was our practice at that time, our policy and our instructions to all representatives, that the amount of gasoline, the minimum amount of gasoline, to be inserted there was arrived at by the formula I have previously described, namely, that it was not to exceed 85 per cent of the known requirements of that customer.

We now come to Form 337 under print date of 2-51, Exhibit 5-G. Along, or sometime, I believe it was in 1950, our instructions to our representatives were changed, and from that time on up to the present they are to insert a minimum quantity of gasoline, or, the minimum quantity of gasoline that the buyer agrees to purchase is fixed under our formula, but not to exceed 75 per cent of the dealer's known requirements.

Q. That is, that is the maximum amount that Richfield agrees to deliver to the outlet or to the other party to that sales contract, Exhibit 5-G?

Mr. Paradise: Your Honor, I must object to a question [fol. 1191] of that sort. I think that indicates the fallacy of permitting an examination of a witness as to the provisions of a written contract. That is an obvious misinterpretation and a misstatement of the language of the contract.

The Court: Let's hear the question. I was reading something here.

(The question was read.)

The Court: Overruled.

The Witness: Pardon me, sir. I misunderstood. It was overruled.

No, that is not correct, sir. I have explained that the dealer through the formula that I have described agrees to purchase a minimum quantity of gasoline. He is under no obligation to purchase in excess of that figure, though he may, if he so desires.

By Mr. Dixon:

Q. Did you understand my question, Mr. King?

A. I believe I did.

Mr. Dixon: Would you read my question, please?

(The question was read.)

Mr. Dixon: Do you want your previous answer read, on which that question is based?

The Witness: All right. If you will go back and read the previous question and the answer.

(The record was read.)

[fol. 1192] The Witness: No, that is not. That is, the minimum as inserted there is the minimum quantity that the dealer is obligated to purchase.

The Court: But as to that minimum, you have inserted in those two last versions which are marked 8-48 and 2-51 a clause which fritters away your obligation to give them the minimum, but you have stated, in effect, if you cannot deliver, you merely reduce his obligation, and you may discontinue his deliveries for various reasons, and then you also add a clause that you can prorate it.

The Witness: Your Honor, are we looking at the same thing?

The Court: Wait a minute. We are looking at 2-51.

The Witness: Oh, yes, 2-51.

The Court: You see, that clause is the same. That second clause is the same as under the——

The Witness: This one here, sir.

The Court: Yes, is identical with the one before. In other words, perhaps I haven't followed the language, but that seems to me is new, because it reduces your obligations so

far as the minimum is concerned, by saying it is discretionary with you whether you are going to give him any at all, and if you don't give it to him, then he has no recourse except that you reduce his obligation to take less than he had promised to take.

[fol. 1193] The Witness: Let me read this.

The Court: Yes, read that. That is the way it reads, to me. Maybe it has a different meaning to you.

The Witness: Well, that is simply a force majeure clause, as I interpret it, by which, for reasons beyond our control, to this customer we could reduce the deliveries proportionately as we did all deliveries.

The Court: That is the second clause, but the first clause does not say that. It says:

> "The obligation of seller to deliver the minimum quantities above specified shall at all times be subject to Seller's right to be exercised within its sole and exclusive discretion with or without notice to discontinue, restrict and/or curtail the delivery of and/or to change the specifications of any product in the event of shortage of products, crude, base materials, additives, transportation, or labor and/or for any reason similar or dissimilar to the foregoing."

[fol. 1194] The Witness: That is what I would interpret that, your Honor, as being, just that we have qualified it that by reason of any shortages, labor difficulties, and so on. Now, I can add this, that I know of no instance where we have failed to deliver the minimum quantities as set forth, as long as the dealer wished to purchase and accept those quantities.

The Court: All right.

By Mr. Dixon:

Q. Coming now, Mr. King, to the exhibits, Government's Nos. 5-A, 5-C and 5-E, entitled "Painting Agreement," dated August, 1937, June, 1939, and August, 1948.

Mr. Dixon: That is the first one, Judge.

(Handing document to the court.)

I regret that we do not have an extra copy of the other two exhibits.

The Court: That is all right.

By Mr. Dixon:

Q. Those were the agreements, were they not, Mr. King, which were generally entered into with the other party to the sales contracts, Exhibits 5, 5-B, and 5-D, and 5-G, that we have previously referred to?

A. These painting agreements were used over a period of years, starting with your Exhibit 5-A, which was in use in 1937, and 5-C, which was used in 1939, and 5-E, which has been in use since 1948, and, I believe, up to the present [fol. 1195] time.

Mr. Paradise: Your Honor, for the purpose of the record, your Honor will recall that these particular four exhibits are those to which an objection was interposed and they were admitted subject to a motion to strike.

The Court: That is right.

Mr. Paradise: May I make an objection for the purpose of the record that the testimony concerning the painting agreements is similarly subject to a motion to strike?

The Court: All right.

By Mr. Dixon:

Q. Directing your attention to those exhibits, I will ask you to examine the same and state whether you find any provisions contained therein with reference to the putting up of signs on the property, which may be painted under those agreements?

A. Will you read the question, please?

(The question was read.)

The Witness: The agreement provides——

By Mr. Dixon:

Q. Which one?

A. I am reading 5-C, dated 6-39, that the agreement permits Richfield to paint the station in Richfield colors and insignia.

Q. Now, Mr. King, before we go on to the other exhibit, may I ask, since the judge does not have a copy of this agreement, that you read the provisions of paragraph 1 of [fol. 1196] Exhibit 5-C to the court.

A. Paragraph 1 of Exhibit 5-C, under date of 6-39, the agreement that was generally used at that time, provides in paragraph 1:

> "That dealer shall remove from the surface of the service station which is to be painted all signs and insignia, and upon completion of the painting of said service station by Richfield, shall not place upon or over the painted surfaces any advertising, sign, trademark, insignia, or any other matter, without first procuring the consent and approval of Richfield."

Q. Do you know the purpose of that provision, Mr. King?

A. No, I can't say that I do know the purpose of that, because I was not in authority when that document was originated.

Q. Were you acting as, or were you in charge of the Southern Division of Richfield at the time that agreement was first used, namely, in 1939?

A. Yes, sir.

Q. Did you have occasion to use that agreement while you were in charge of the Southern Division?

A. Yes, sir.

Q. It is a fact, is it not, that it was used in that form [fol. 1197] for a considerable number of years thereafter?

A. I recall the form in general use at that time, sir, yes.

Q. But you cannot state to the court what the purpose of that provision was? If you know?

A. Well, I assume—— no, I ——

Mr. Paradise: I object to assumptions. The question relates to knowledge. I think the question has been asked and answered.

The Court: No, he is asking him specifically. Maybe I can help. The entire contract is worded so as to show a desire to put the colors of Richfield and the insignia of Richfield on the station to such an extent that you were willing to do the work for nothing if he complied with the conditions of the contract. If he violates it in any way,

then he had to pay the sum, whatever it had cost you to paint it, which you inserted there?

The Witness: You are right in that respect, your Honor. Painting of stations is a competitive practice. We find that it is demanded.

The Court: That is right. But you did keep the station tied, in that you are interested in making it a Richfield station, namely, with your colors, and your advertising, and you reserved the right to permit or not to permit any other insignia to go on.

[fol. 1198] The Witness: I think that would be a natural conclusion, since we have invested a considerable sum in painting the station.

The Court: That is right. Once more you are forthright.

The Witness: Thank you, sir.

By Mr. Dixon:

Q. I will hand you Government's Exhibit 5-E, Mr. King, dated August, 1948, being your Form 59, entitled "Painting Agreement," and ask you if you find the same provision contained therein.

A. Paragraph 1 of this document, Exhibit 5-E, under date of 8-48, reads that "Dealer shall remove from the service station which is to be painted all signs, insignia and obstructions, so that the obligations of Richfield hereunder may be performed with a minimum of hindrance."

Q. So that the provision that we previously referred to in Exhibit 5-C you do not find in Exhibit 5-E; is that correct?

A. That is correct. Paragraph 1 has been changed.

Q. Do you know the reason for that change, Mr. King?

A. No, I do not.

Mr. Dixon: Your Honor, I am perfectly willing to go right on through, but I assume you may want to take a recess.

The Court: Yes. I think we will give the witness a rest. [fol. 1199] We will have a short recess.

The Witness: Thank you, sir.

Mr. Dixon: This was a good stopping point, Judge. That is why I suggested it.

(A short recess was taken.)

[fol. 1200] Mr. Dixon: The Government offers Exhibits marked No. 6, 6-A, 6-B, 6-C, 6-D, and 6-E for identification in evidence.

(The documents referred to were marked Plaintiff's Exhibits 6, 6-A, 6-B, 6-C, and 6-E for identification.)

Mr. Paradise: If the court please, the defendant objects to the introduction in evidence of any of the exhibits so identified on the ground of complete lack of relevance or materiality to any issue in this case. These agreements are agreements between the defendant, on the one hand, and commission agents who operate as bulk plants. There is no issue in this case as to the nature of the dealing between Richfield and its commission agents or its operators of the bulk plants. This case is confined to dealings between Richfield and the service station dealers and operators.

The Court: I think in view of the contention of the defendant that the relationship with the station handlers, the station owners, is some type of fiduciary relationship which has been left nameless, in view of the reference to the Masonite use of the words *del credere* agency which has a strict meaning, I believe it bears upon the issue to show the type of strict commission agency which Richfield itself establishes, where a relationship which would commonly be called that of a factor is established. What effect to give to them is a different problem. The objection is overruled.

Mr. Dixon: They are received in evidence, your Honor?

[fol. 1201] The Court: They may be received in evidence.

By Mr. Dixon:

Q. In our previous testimony, Mr. King, you have dealt, I believe, with various types of arrangements between Richfield and the operators of retail outlets at which Richfield products were sold. Those agreements which you referred to and looked over were all written agreements. Does Richfield sell petroleum products to retail outlets under any oral arrangements with the operator of that retail outlet where he receives gasoline or other petroleum products from Richfield for resale purposes to the consumer or user?

Mr. Paradise: Object to the question, first, on the ground of vagueness and ambiguity. I think counsel should define the words "oral arrangement." More importantly, it goes to the question of the materiality, if the court please.

The Court: It is merely a preliminary question. He wants to know if there are other forms of arrangements which are not represented by agreements in writing or supplementary agreements in writing. Overruled.

A. I think that we have reviewed here yesterday and today all of the written forms of contracts that we use, and we do not have any oral agreements.

The Court: All right.

By Mr. Dixon:

Q. Do you know what is meant by the term "uncontracted outlet," Mr. King?

[fol. 1202] A. I would take that to be an account that we are selling gasoline, a retail account that we are selling gasoline to where we have not entered into one of the written agreements that we reviewed.

Q. So that there are, then, other outlets—I mean types of arrangements which are entirely oral, which are entered into with the operators of these retail outlets who purchase petroleum products from Richfield?

Mr. Paradise: Now, I think, if the court please, is the time to make the objection on the basis of materiality. This is a matter to which I adverted during my opening statement and the court requested that I defer it until evidence was offered.

The Court: I will sustain the objection in view of the statement of the witness that there are no oral arrangements and that the only type of dealings are covered by those. Other contractual arrangements that they may have are not within the scope of this inquiry. We are talking about dealerships, and uncontracted for outlets may mean a lot of things not dealerships, and until you show there are dealerships covered by them, I will take his denial as sufficient for the present.

By Mr. Dixon:

Q. Does Richfield in fact, Mr. King, sell petroleum products to operators of retail outlets without any written arrangement of any kind whatsoever with the operator of [fol. 1203] the outlet?

A. Yes, sir.

Q. How many outlets of that kind, if you know, does Richfield sell its petroleum products to?

Mr. Paradise: Objected to on the ground of materiality, if the court please. May I make the statement concerning the basis of our objection?

The Court: Yes.

Mr. Paradise: This is a matter of the issues in this case, if the court please. These uncontracted accounts are identified as service stations or outlets who purchase the gasoline from Richfield without a contract of any nature, oral or written. The Richfield has provided the Government with information concerning these in response to interrogatories, but we have always taken the position and have so informed the Government as far back as 1949, that there is no issue in this case as the pleadings frame the issues concerning any accounts of service station other than—No. 1, the L-O stations, which are Richfield's own stations in which we have these operators; 2, 3-C stations under which there is a written lease, a sublease back and sales contract; and 3, the so-called 337 stations, where there is written sales contract and on some occasions a written painting agreement.

Those are the agreements which are the subject matter of the Government's Exhibits Nos. 1 through 4.

[fol. 1204] Now, the complaint, if the court will examine it, refers to particular types of service station transactions. I call the court's attention first to paragraph 12 which refers to 2600 service stations which are defined to fall into two categories. First, there are approximately 1200 in it which are leased to operators by defendant under written lease agreements, and the second category is 1200 which are alleged to be—no. Then there are 1400 of them which are alleged to be operated by independent service station operators under written painting and sales agreements.

The same reference is contained in greater detail in paragraphs 17, 18, and 19.

The court also, by an examination of those paragraphs, will see that there is no allegation with respect to any service station as of any nature whatsoever other than those which are referred to as being operated under either one, written lease agreements with the defendant, or two, written sales contracts with the defendant. The only service station operators or dealers who are covered by the complaint are those who are operating under some sort of a written agreement, either a lease or a sales contract, which latter in some cases is alleged to be accompanied by a painting agreement.

The issues have been joined by the complaint in that fashion. Any extension of those other accounts where there is no agreement, oral or written, would completely change [fol. 1205] the scope or nature of this lawsuit.

I think the Standard Oil case to which counsel referred in his opening argument was—I think this will reveal the basis of the separate issues. In the Standard Oil Company case we had a fairly circumscribed issue, I think. We had the factual situation of exclusive dealing contracts. We had written contracts, all of which were exclusive dealing. There were also oral agreements which were also exclusive dealing, and there was an acknowledgment of an independent businessman relationship. And the question was: Was there a violation of the Sherman or Clayton Acts, and the question of effect, and, of course, it is unnecessary to labor the point before this court.

This case differs under the present pleadings in this respect: We have two types of service stations, into one of which we deny independence, and those are the L-O stations. The others we admit they are independent businessmen. So far as the independent businessmen stations are concerned, those are the 337 stations, those are the 3-C stations, and as to those we admit that they are independent businessmen and we deny any exclusive dealing, written or oral. But those two types of stations are defined in the complaint as being stations where there are written agreements.

As to the L-O stations we acknowledge the direction of

the type of product that is sold in there and say that we are [fol. 1206] entitled so to do under the antitrust laws.

Now, bringing in a third issue into this case, and that is to say, the issue with respect to uncontracted stations, adds an issue that was not present either in the Standard case nor is it presently present under these issues as framed by this complaint in this case. And that is the question of the concept of selection of customers and refusal to sell. This is a matter of spot sales, without contract, deliveries to a station without any contract whatsoever. And I submit to the court that at this stage of the case, some four years after the complaint was filed and after the position of the defendant in the answers to interrogatories for a period of two years, that these matters were not covered by the complaint, during which time the Government has not elected to amend its complaint or come to the court and say we want to broaden the issues, it is too late at this time for the Government to do so.

The Court: All right, I will hear from the Government.

Mr. Dixon: The complaint, your Honor, we believe adequately covers this type of an outlet in paragraph 16, where it is charged that the defendants have entered into arrangements and is operating under contracts consisting of written and oral agreements and understandings hereinafter described between itself and independent service station operators.

In other words, this complaint previously is dealing with [fol. 1207] a market which is represented by the retail outlet regardless of whatever classification it might be placed in by the defendant for its particular purposes.

The Government does not concede that there is any difference insofar as the L-O type of arrangement, the 3-C, and 337 type of arrangement is concerned as far as the charges made in the complaint that is before this court is concerned. And that, therefore, any type of outlet which is a retail outlet which is being supplied by the defendant with petroleum products and automotive accessories comes properly within the scope of the outlet on which the restraints are alleged to apply in the complaint.

There has been no surprise here on the part of the defendant at all, I submit, concerning this matter. They knew for some time that the Government was going to

bring this type of outlet in along with all the others that are previously referred to by your Honor. And I do not think that there is any ground for claiming surprise. Certainly they come within the broad scope of the charges made in this complaint, because this complaint does not deal with L-O outlets or any other particular type. It deals with retail outlets and restraints which the Government claims are imposed upon the independent businessmen operators of those outlets by the contracts and understandings—and I emphasize that latter word—many of which are oral, as the evidence already shows, between Richfield and those [fol. 1208] operators, which we submit violate the Sherman and the Clayton Acts.

Now, with reference to the Standard case, your Honor recalls that there were a large number of outlets of that type that were directly involved in the Standard case. There were no written contracts of any kind with those outlets. They were retail outlets of the same type as Richfield has in this case and with whom it is doing business with the operators of such outlets.

The Court: All right. Mr. Paradise.

Mr. Paradise: With respect to the last statement, if the court please, I would like to quote from the Supreme Court's decision, which states in discussing the type of the transaction there involved—I am reading from page 296 of the Supreme Court Edition——

> "It was also found that independent dealers had entered into 742 oral contracts by which they agreed to sell only Standard gasoline."

As Mr. King has testified, there are no oral contracts.

Now, with respect to Mr. Dixon's suggestion that this complaint is a free charter for the Government to charge any sort of antitrust complaint that it elects, I submit that that is not true under the rules of procedure of this court. [fol. 1209] There is no allegation in this complaint, search it from whatever direction you will, of a charge of restraint on a particular type of outlet, regardless of the nature of the contract.

This complaint charges restraints with respect to two types of service stations: one, where there is a written lease; and, two, where there is a written sales contract,

plus in some instances a written painting agreement. In each of those cases the complaint alleges that the written contract itself has been supplemented and modified by a supplementary oral agreement.

There is no reference in the complaint, no charge whatsoever, no allegation, of sales with respect to stations with which there is no contract of any sort, written or oral.

Now, I admit frankly Mr. Dixon's statement that this is not a matter of surprise, that we have discussed it with the government for a period of two years, and had the government intended to enlarge the issues of this case to include this type of station, it was perfectly free to come into court to amend its pleadings and enlarge the issues.

But this substantially changes the issues of the case. It is no longer one of whether a particular contract is an exclusive dealing contract. Then we get to the very different antitrust concepts of selection of customers, as is per- [fol. 1210] mitted under the Robinson-Patman Act, and the problem of refusal to deal, and the problem of attempted monopoly. And there is no charge of attempted monopoly. All of those problems will be injected into this case which are not presently present.

The Court: All right. Gentlemen, I am at a disadvantage in this case because the case was not pending before me during this entire period, and I want the record to show that I had nothing to do with this case in its preliminary phases.

Will you please sit down?

Mr. Dixon: I am sorry, Judge.

The Court: I didn't know whether you were through. If you want to say something else——

Mr. Dixon: No.

The Court: ——before I rule, you may do so. I am ready to rule. If you want to add anything, I will be glad to have you do it.

Mr. Dixon: No.

The Court: Now, where was I when I was interrupted?

(The record was read.)

The Court: In fact, the case was only transferred in due course through the calendar, I think, early this year, either in January or February. It was sent back to the calendar

early this year, and after going to several calendars, and [fol. 1211] being sent back again under the rule which allows any judge before whom a case is pending to send it back to the calendar for reassignment, it finally came to rest in my department, and I told you gentlemen it was going to rest here. And here it is. I said to you, "You are going to try it." What I say should not be taken as a criticism either of counsel or of the judge who handled the preliminaries. One of the problems which confronts us—you may get down, Mr. King, because I am going to talk a little while. I haven't said very much up to now, and I am going to do a little talking, so you may as well sit in the audience.

The Witness: Thank you, sir.

The Court: One of the problems that confronts us in this case, and one of the problems to be given a good deal of thought, is the problem of crystal-izing the issues. It is a problem which confronts us in these cases more than others, because of the desire of both sides to keep the issues in what they call a fluid condition. Now, I am a very strong believer in notice, pleading, and fluidity, but I have insisted at all times that there ought to be a stage in the litigation where the issues have become crystal-ized, and where we know what we are to litigate, and that stage is reached when the trial of the case actually begins.

In fact, in some of these cases you have had three, four [fol. 1212] or five pretrial orders and the question has been raised in discussions. Now, gentlemen, when I am referring to these discussions, you understand that I am referring to the discussions in which I participated in the last two years as a member of the committee appointed by the Chief Justice to investigate these procedures and to devise some method that could be used as a guide by judges in the trial of these cases. The Chief Justice chose four judges of the Courts of Appeal and six District judges, every one of whom had had experience in the trial of antitrust cases, especially.

In the conferences we have had we have met not only with representatives of the government, but in the conference we had in New York we had in representatives of all the large firms who had represented defendants in antitrust cases, including the men representing the defendants in some of the cases pending throughout the country. We had,

as I told you, representatives of the firm which is defending the Bankers in this Investment Bankers case. We even had in both sides in the famous suit against the Ford Company, the private antitrust litigation. We had both the attorney for the plaintiff and the attorney for the defendant. As I told you, our committee met, and by a fortuitous circumstance I happened to be in New York and I heard of the meeting there, and Judge Prettyman hinted to the com- [fol. 1213] mittee that I was there, and they very graciously invited me to participate in their deliberations on the matter.

Now, one of the problems in which we were all concerned was this: that despite this desire for fluidity—I don't know who put that "fluid" word in there, but there it is, and it was in the discussions—the idea of keeping the issues fluid, there ought to be a stage where, to use the language of the street, we jell them, and we say, "As of today, this is the issue we are going to try." If you do not do that, then you never reach a stage where you actually are certain of what you are going to try.

Now, there is disagreement among lawyers and among judges as to when that stage is reached. The younger judges—I mean younger not in age, but in experience—would like to keep the thing fluid all the time, but the older judges feel that it does not work for economy of time to delay too long what we have called the clarification of issues.

Now, the object of the new pleadings is to substitute a fluid system, whereby the issues are not frozen by the pleadings, but that the actual issues are determined through the various methods of pretrial and discovery, which are provided in the new rules. And I am a great admirer of the new rules. I am opposed to all those, including some men on this bench, who want to return to the old system, where [fol. 1214] you have to state a cause of action in the complaint or go out of the window. I have been a student of pleading all my life, and I think we have departed from that old system, and, under my theory, I say you are entitled to recover or you ought to recover regardless of whether you have it tied down to a particular legal theory. In other words, using an old expression I used in an article I wrote over 20 years ago for the New York Law Review, in which I said: The litigants should not be thrown out of the Temple of Justice, scourged with costs, merely because

they entered through one door rather than another door. They ought to be thrown out because they had no business in there in the first place.

So that I believe that a lot of liberality should be allowed in framing issues, but I believe when we have reached the trial stage, then we ought to make an inquiry and ask whether the issues have been clarified to such an extent by pretrial procedure, or other procedure, or by the pleadings themselves in the absence of pretrial procedure, that there should be no deviation from that pattern.

Now, there is one other matter I want to refer to in a very ordinary rule of pleading. Indeed, it is especially applicable in California, because we are more liberal here than in many other states, and that is this: If in the same pleading you have a general statement, and you do not [fol. 1215] clarify the statement, then anything that would be covered by the general language would be admissible in evidence, under that pleading. But when you have chosen yourself to particularize, then the particularization is the measure of your general statement. Not to get professorial —sometimes a lawyer will accuse me of getting back to one of my other occupations, that of teaching, but ultimately you have to indulge in exposition in order to clarify your own thoughts—we have a rule in California, for instance, which the government has taken advantage of repeatedly in a large number of condemnation cases, and in other cases, where it showed ownership of property by a statement that, "John Smith is the owner entitled to possession of the property," which is a statement of the ultimate fact.

This is one of the few states in the Union which allows that. However, our Supreme Court has said that if you content yourself with that, then no demurrer to your complaint will lie, and you are not limited to any particular way of proving your ownership. But if, after such allegation, you go on and particularize and set forth a title, that by mean conveyance from the Contessa de Santa Cruz you got it, because she was a faithful Contessa and the lands were claimed by the early settlers on behalf of the King of Spain, then your allegation does not rise above that particularization. I refer to the Contessa de Santa Cruz, because we [fol. 1216] happened to have had a case in this court involving the Contessa de Santa Cruz in a fight over the old Domin-

guez Estate, but that principle applies to not only that type of allegation, but to other allegations.

You can particularize in a pleading, and unless a bill of particulars is asked for, you are free at the time of trial to offer any evidence that comes under it. But when you have particularized, either in your pleadings or in a bill of particulars, then you cannot be heard at the trial to say that the pleadings are still fluid and that we ought not to be tied down to a definition of the issues.

Now, this complaint has particularized the issues. It is true that paragraph 16, which is a general allegation, contains general words, but not only in the paragraph which precedes it, but in the paragraph which follows it, the government particularized as to the particular stations they are going to concern themselves with, and they did that in 1947.

Mr. Paradise has referred to paragraph 12. In that paragraph which sets forth the nature of the trade and commerce, the government gave notice to the defendant as to what it is going to contend. *The government gave notice to the defendant as to what it was going to contend.* It specified it is going to contend that:

> "Defendant Richfield owns and operates approxi- [fol. 1217] mately 230 bulk plants from which it distributes its petroleum products to approximately 2,600 retail service stations located throughout the States of California, Oregon, Washington, Texas, Nevada and Idaho." Then it starts to particularize by saying: "All of said 2,600 service stations are operated by independent service station operators under written leases or painting and sales agreement with defendant." Then it further particularizes, "Approximately 1,200 of said service stations are leased to the operators thereof by the defendant under lease agreements under which possession of and the right to operate each service station is given to the lessee-operator" and 1,200 others are owned by the defendant, and some of them are leased by the defendant from the owners thereof, including some of the operators. "In addition to the aforesaid 1,200 service stations, approximately 1,400 service stations are operated by independent

service station operators under painting and sales agreements entered into between defendant and said operators."

Then it specifies the nature of the painting agreement. [fol. 1218] I am not going to read the entire agreement. It ends up by saying:

"The independent operators of these 1,400 service stations usually own the service stations themselves, or lease the same from the owner thereof."

Then the method of distribution is described. Then when we come to the offense charged, the government states in paragraph 16, and I am going to read it in full, and I am going to show how the government ties in paragraphs 17 and 18 to the things it claims it is going to cover by paragraph 16, and it is too late now to come in and bring in outlets other than those which they themselves specify, and as to which the issues should be directed.

"Beginning sometime prior to 1939 and continuing thereafter up to and including the date of the filing of this Complaint, defendant Richfield has violated and is now violating Section I of the Act of Congress of July 2, 1890, as amended, commonly known as the Sherman Act, and Section 3 of the Act of Congress of October 15, 1914, as amended, commonly known as the Clayton Act, in that it has executed, entered into and is operating under contracts, consisting of written and oral agreements and understandings, hereinafter de- [fol. 1219] scribed,"—"hereinafter described," remember that is the phrase you use—"between itself and independent service station operators, which contracts are in unreasonable restraint of, and substantially lessen competition in, interstate trade and commerce in petroleum products and automotive accessories products."

Now, if that had been the only paragraph, and the words "hereinafter described" had been omitted, that would have been a sufficient pleading under the statute, but the defendant would have been entitled to a bill of particulars, and

the bill of particulars could have requested, and the court would have granted it, I am quite certain Judge Hall would have granted it, because Judge Hall is a believer in the old system of pleading. As a matter of fact, he thinks a pleading should state a cause of action, and that is probably known. In fact, he is sponsoring a resolution before the judges to abandon the present system of pleading and to put a provision in the rules that the complaint should state a cause of action and do away with the expression "to state a claim."

I am not saying that by way of criticism. In fact, we were office associates before either of us became judges, so I know his attitude.

[fol. 1220] So I am quite certain that if that had been asked, if the defendant would have asked for a bill of particulars in that respect, it would have been granted.

However, the government was very obliging, and in paragraph 17 they picked up the previous paragraphs. They picked up paragraph 12, and once more told us that what we are talking about are the things we talked about in paragraph 12.

[fol. 1221] This "general" does not mean "and et cetera," that we are going to put in something else that we may find out by discovery.

They go on and then in paragraph 17 this is what they say:

> "The written agreements entered into by defendant Richfield with independent service station operators, which are in full force and effect, are known as 'service station leases,' 'sales contracts' and 'painting agreements,' referred to in paragraph 12 herein. These written agreements have been modified and supplemented by oral contracts, agreements and understandings between the defendant and the independent service station operators which specify and restrict brands of petroleum products and automotive accessories that may be used by, sold at, or distributed through approximately 2,600 said service stations located in the States of California, Oregon, Washington, Nevada, Idaho and Arizona."

Then they describe those. Then again, in paragraph 19:

> "The defendant has entered into a written painting agreement and a written sales agreement as described in paragraph 12 hereof with each of approximately 1,400 independent service station operators in the States named in paragraph 17 hereof."

Then, again, follows 17 lines of description and that [fol. 1222] is where the Government, if it intended to say "and there are other agreements, other outlets not covered by any written agreements or supplemental agreements which operate in this manner," should have said so.

The Government did not do it. Instead of that, it follows then an enumeration of the data upon which their conclusion is based. Then they again talk about sponsored products and they talk about service station leases and contracts. Again they refer to paragraphs 18 and 19 and 2600 stations.

In this, the Government itself, by its own pleading, has tied itself and has told the defendant on April 30, 1947 this is what we are going to charge you with, and the defendant accepted that challenge, has gone through with these proceedings with that understanding, and at the present time I will not allow the Government to broaden the issues and to introduce contracts relating to the type of agreements they do not cover.

The Government cannot claim it did not have any notice, because it had notice. As a matter of fact I convened the grand jury for them and they asked, through Judge McCormick, to start an investigation. They did not know what would come out of it. I assume that many of the facts here developed came out as a part of the investigation which they conducted before the grand jury.

I do not wish to be understood as criticizing the Govern- [fol. 1223] ment for saying that the grand jury was established as a subterfuge, because we realize that when you have a grand jury the subpoena powers are much greater than the ordinary subpoena power, and it is perfectly legitimate for the Government to use the subpoena powers to secure information before they determine what kind of violations exist and whether they are going to result in criminal

investigation or not. I am merely referring to a fact that I happen to know about.

So, to sum up what I was going to say, there ought to be a stage in the proceedings. There has been no pre-trial order and there have been all sorts of proceedings through interrogatories and the like, and I believe that at the present time the Government should be confined to the particularization which they themselves have set out as the basis for their complaint.

So that the objection to the particular question will be sustained. I made this elaborate statement so that the record would be intelligible. I dislike offers of proof. I do not think they are proper or necessary. We do not like them in California and the Supreme Court of California has rejected them. I have always said that the question should be broad enough to indicate the scope of the testimony so that the court may know what it is ruling on without an offer of proof in the record.

So I have indicated that I believe any testimony as to [fol. 1224] non-contractural outlets is beyond the issues as they are defined at the present time. And I will not allow at this stage an amendment of the pleading to produce them, because if we do that, we have an entire new issue and have to start pleading all over again. So, for the present, we limit ourselves to the issues as defined.

And, with that observation, we will take our usual recess until 2:00 o'clock.

(Whereupon a recess was taken until 2:00 o'clock p.m. of the same day, Wednesday, May 9, 1951.)

[fol. 1225] Los Angeles, California, Wednesday, May 9, 1951. 2:00 P.M.

The Court: All right, gentlemen:

Mr. Dixon: Mr. King, would you resume the stand?

The Court: Our star witness.

W. G. KING, JR., called as a witness by the plaintiff under Rule 43(b), having been previously sworn, resumed the stand and testified further as follows:

Direct Examination (Continued)

By Mr. Dixon:

Q. Mr. King, with reference to the TBA items which are——

The Court: Have the initials "TBA" been explained for the record, as to what they signify?

Mr. Dixon: I don't know that they have.

The Court: I do not think they have.

Mr. Dixon: It may shorten the questions and answers of all witnesses if it may be stipulated that those initials refer to tires, batteries, and other automotive accessories.

The Court: That is right. It is the same term, as used in the industry, that we used in the other case, but I do not think the record here has spelled it out so far.

[fol. 1226] By Mr. Dixon:

Q. In reference to the TBA items which are handled by Richfield, as I understand it, there is no written arrangement concerning the handling of those items by the distributors of Richfield?

A. There is no written agreement.

Q. Is there any written arrangement with the operators of the three types of outlets that we have previously described and referred to in writing with reference to the handling of TBA items?

Mr. Paradise: May I suggest that the question is compound, and request that it be asked separately with respect to the different stations, the different categories.

The Court: It is a preliminary question. If it is answered in the affirmative, then it does not need to be split. If it is answered in the negative, then it may be split. Go ahead and answer it, if you can.

The Witness: Will you repeat the question, please?

(The question was read.)

The Witness: There is no written agreement with any of these operators. However, as I have mentioned heretofore, they are instructed as to the TBA items that they can sell to Richfield's credit card customers.

By Mr. Dixon:

Q. Now, I believe Mr. Dinkins was your supervisor, is that correct?

I mean, he was your predecessor—pardon me—rather [fol. 1227] than supervisor?

A. Yes, sir.

Q. He was in charge of the marketing of petroleum products and automotive or TBA items by Richfield, while he was in the position of vice-president in charge of sales, was he not?

A. Yes, sir.

Q. At that time, that is, at the time Mr. Dinkins was vice-president in charge of sales, you testified, I believe, you were general manager of marketing under the direct supervision of Mr. Dinkins?

A. At one time I was assistant general manager, under the supervision, and prior to that division manager, yes, sir.

Q. What position did you occupy in 1947, do you recall, with Richfield?

A. Assistant general manager.

Q. Now, do you recall any particular instructions that you received from Mr. Dinkins during the early part of 1947 with reference to the sale and distribution of TBA items to the retail outlets by the distributors of Richfield, that is, the retail outlets that we have before referred to?

A. Well, I don't—you would have to be more specific, Mr. Dixon. Naturally, during the period there were many, many instructions issued.

Q. Well, did you get any instructions about making cer- [fol. 1228] tain that the operators of such outlets were 100 per cent, shall we say, on the TBA items handled by Richfield?

A. I recall instructions from time to time emphasizing the necessity of having the operators of our L-O stations handle the complete line of authorized TBA items, and I

recall instructions to the effect that the dealers handling our products on other contracts were to be instructed as to what items they could charge under our credit card procedure.

[fol. 1229] Q. And do you recall any specific instructions received from Mr. Dinkins in February of 1947 concerning the TBA items sold or distributed to the outlets that we have heretofore referred to?

A. Well, as I say, Mr. Dixon, you would have to be—there were numerous instructions and I just would not know what you would refer to.

Q. At the time the 3-C outlet dealer was signed up what instructions, if any, were given him at that time with reference to TBA products?

A. At the time our representative negotiates a 3-C contract with a dealer, insofar as the TBA items are concerned he is told what items, what items of TBA are on Richfield's approved list and are eligible to be charged under our credit card system. Naturally, in soliciting the business of dealers we emphasize the vast number of people who hold our credit cards, and that is one means to interest the dealer in handling our petroleum products. But he receives no other instructions from our representative other than as to those items which he can rightfully charge to Richfield to a credit card customer.

Q. There are some instructions given to the operators of the other types of outlets that we have previously referred to by the Richfield Company?

A. The instructions that I have just reviewed for you [fol. 1230] are given to the dealer under contract 337 in addition to the 3-C which we have just covered. Likewise, he——

Q. Are all——

The Court: Just a minute. Let him finish.

A. Likewise, the operators of our L-O stations are instructed as to which items of TBA merchandise they can charge on Richfield credit cards.

By Mr. Dixon:

Q. Are the dealers of all of the three types of stations given a list of the recommended or sponsored Richfield

TBA items at the time they enter into those arrangements with Richfield?

A. I do not know that the list is given to them at the time the arrangements are made, but I do believe that a summary of the approved items has been circulated to these dealers. After all, we do not want our credit used to sell the products of, we will say, competitors or in which we are not interested.

Q. As to the L-O type of station, I presume you would not have, then, any objection to the dealer operating that station to buy products competitive to those sponsored by Richfield if he could buy them at a cheaper price, would you?

A. We instruct the operators of our L-O stations to handle a representative inventory of these approved items so that our credit card customers can get the complete service. Now, we hope that he will confine his purchases to those items, but it is not unusual to find the operators of [fol. 1231] these L-O stations handling many other items that are not on our approved list or, in some cases, that are competitive to our approved list.

The Court: Does that apply to things which are in supply, that you have in supply, or does that apply merely as a substitute when your regional office does not have it?

The Witness: No, your Honor, it would not be confined to that. I have known and I have observed our operators handling, in addition to our approved items, other items that might be competitive to those items.

The Court: Do you have any method of policing the handlers in any of these three groups to see whether they carry their full quota or whether they supply part of them from your list and others from competitors' lists?

The Witness: Your Honor, in the case of our L-O stations, as I have pointed out, we direct the operator as to how we want the station operated. Among other matters, the instructions are those pertaining to his handling a representative or a balanced inventory, we will call it, of TBA items.

The Court: And as to the others, merely a hope and wish or what?

The Witness: I think you have pretty well expressed it.

As to the other types of dealers we do not, would not and cannot exercise any such prerogative, and we just hope that they will buy our products.

[fol. 1232] The Court: Whether you can or do not, do you assume to?

The Witness: No, sir. we do not. We do not take any direction over the operation of their stations.

The Court: All right.

By Mr. Dixon:

Q. What instructions, if any, have you given your distributors of TBA products with reference to advising the operators of the other types of outlets, namely, the 3-C and the 337 type of outlet, to that effect?

A. The TBA distributors function entirely on their own in the sale of TBA items, and they are privileged to sell any 337 or 3-C dealer any item, TBA item, that they can deliver. In the case of our L-O stations we prefer that the TBA distributor sell our operators our approved items, but insofar as the other two types of stations are concerned that is a matter entirely and strictly between the TBA distributor and that dealer.

Q. And have you ever so advised the TBA distributor or any TBA distributor of Richfield to that effect, Mr. King?

A. I do not recall any instructions one way or the other. I think that is just a matter that is taken for granted. He is a distributor of TBA products and he is out to develop all the business he can, and in fact sells many stations that——

[fol. 1233] Mr. Dixon: Just a moment, Mr. King.

The Court: Go ahead.

The Witness: And, in fact, sales, to my knowledge, to many stations that do not even handle Richfield Petroleum products.

By Mr. Dixon:

Q. Yes, I understand that, but that wasn't my question, Mr. King. I take it from your answer that you have never given any instructions to the effect that they are permitted to do that, to either the distributors or to the operators or dealers in the 3-C or the 337 type of arrangement?

A. While I can't recall any specific instructions, I can say that no restrictions have been placed upon the sale of their merchandise,—I am speaking of the TBA distributor.

Mr. Dixon: The government offers in evidence what has been marked for identification Exhibit No. 7.
Mr. Paradise: May we see it, please?

(The document was handed to counsel.)

Mr. Dixon: I take it, there is no objection.
The Court: All right.
The Clerk: Exhibit 7 in evidence.

(The document referred to was marked Plaintiff's Exhibit 7, and was received in evidence.)

By Mr. Dixon:

Q. I will hand you Government's Exhibit No. 7, Mr. King, and ask you if you will state to the court what that is.
[fol. 1234] A. This Exhibit No. 7 is entitled, "Richfield TBA Distributor's Monthly Report," under date of 2-45, and this is a report made by the distributor, the TBA distributor, to Richfield, in which he totals his sales of various TBA items to the dealers or L-O operators handling Richfield petroleum products.

Q. I don't see anything on that form which says "dealer" or "L-O operator." Do you find anything to distinguish on that form between the two?
A. No.

Q. I do notice a place for the name and address and station number. What does that refer to?
A. Well, a study of any of these records over recent years or since they have been used will show that the names of all of the distributor's accounts are listed.

Q. So that on that form, Government's Exhibit 7, there is a place for the distributor to report to the company on the sales made by the distributor to any one of the three types of outlets that we have previously discussed; isn't that a fact?
A. Would you repeat that question, please?

(The question was read.)

A. Yes, sir.

Q. It is a fact, is it not, that on that type of report form, [fol. 1235] Government's Exhibit No. 7, that you do receive a report on the TBA sales made to the various types of dealers of Richfield petroleum products?

A. Yes, we receive this report.

Q. And that it contains that information?

A. It contains the information of the distributor's sales to dealers.

Q. By "dealers," you mean any one of the operators or any one of the three types of outlets, don't you?

A. Yes, sir.

Mr. Dixon: Will you mark this, for identification, as Government's Exhibit 8?

The Clerk: 8, for identification.

(The document referred to was marked Plaintiff's Exhibit 8, for identification.)

By Mr. Dixon:

Q. By the way, Mr. King, can you tell us who Mr. Carr is, Mr. A. C. Carr?

A. Mr. Carr is presently the manager of the Southern Division.

Q. Was he holding that position in February of 1947?

A. Yes, sir.

Q. And who is Mr. H. T. Hutchinson?

A. Mr. H. T. Hutchinson?

Q. Yes.

A. At present he is my assistant.

[fol. 1236] Q. What position was he holding in February, 1947?

A. He was the manager of our central division.

Q. And who is Mr. E. Kirby?

A. He is presently the manager of our Northern Division.

Q. What position was he holding in February of 1947?

A. The same.

Q. And Mr. G. B. Tanner?

A. G. B. Tanner?

Q. Right.

A. He was a former employee of ours.

Q. What position did he hold in February, 1947?

A. If I recall correctly, he was TBA assistant or supervisor, as we might call it, in the home office.

Q. You mean he was in charge of the over-all supervision of the TBA operation of Richfield——

A. Only——

Q. ——under your supervision, of course?

A. Only at the home office level. He had no contact with the field, or the customers in the field.

Mr. Dixon: The government offers Exhibit 8 in evidence.

Mr. Paradise: Mr. Dixon, will you withhold your offer until I have read the copy, as you suggested that I do?

I might state, your Honor, the reason we are not familiar with this is, in response to the government's subpoena, we [fol. 1237] brought up three filing cabinets of material, none of which we had the opportunity to examine, and we gave the government access to them.

The Court: All right.

By Mr. Dixon:

Q. By the way, will you also tell the court who is Mr. G. R. Miller, Mr. King?

A. G. R. Miller is the manager of our merchandising department, home office.

Q. Did he hold that position in February of 1947?

A. Yes, sir.

Mr. Paradise: No objection to the government's offer.

The Court: It may be received as Exhibit 8.

(The document, heretofore marked for identification as Government's Exhibit 8, was received in evidence.)

By Mr. Dixon:

Q. Mr. King, do you know what is meant by "split pump" in the industry? It has been a long time, I know, since that term may have been used.

A. If your question is directed, do I know what a split pump station is, the answer is "Yes." It is a station that has so many pumps handling numbers of brands of gasoline.

Q. In other words, a split pump is a pump that handles

petroleum products or gasoline from sources other than one supplier?

[fol. 1238] A. A split pump—that is my definition of a split pump station, yes, sir.

Q. Did Richfield supply any so-called split pump stations with petroleum products back in 1938 when you were with the company, to your knowledge?

A. Yes. I recall that we had a small number of accounts, split pump accounts.

Q. Does Richfield supply any split pump retail outlets or stations with petroleum products at the present time?

Mr. Paradise: I object to the question for lack of foundation, if the court please. I thought we established this morning that there is in issue here the problem of Richfield's transactions with dealers under particular types of contracts. I think the witness' direction should be called to the particular type of station and the particular type of written contract to which counsel is directing his attention.

Mr. Dixon: If counsel will stipulate that all of the stations or outlets covered were supplied 100 per cent by Richfield, I will withdraw my question.

Mr. Paradise: I could not stipulate to such a thing, Mr. Dixon.

Mr. Dixon: Then I ask the question be answered.

The Court: Read the question.

[fol. 1239] (The question was read.)

The Court: The objection is overruled. I don't think this is consistent with the ruling I made this morning. I want to explain that what I meant by the ruling is that the question of violation of law in regard to those stations is not in issue. But that does not mean that an incidental question may not be asked relating to what may throw light on the types of contracts. I did not mean to freeze the topic so that any inquiry that might relate to another problem would have to be eliminated. I merely sustained your objection by saying I am not interested in any question of violations as to those stations because of the issues as I interpreted them.

[fol. 1240] Mr. Paradise: It appeared to me that your Honor's ruling was such that the stations pertaining to stations other than those that we are now concerned with

would be immaterial because they may be beyond the issues.

The Court: Of course, that is true, but such an inquiry ancillary to that inquiry may relate to a policy that applies to the three types of stations we are concerned with, although the particular inquiry apparently relates to the type of a station excluded from the consideration of the main case. I do not want to be arbitrary and just draw a curtain across or around, whatever you call it, around that topic because, after all, this is a court of equity and rules of evidence are not to be so strictly limited as to prohibit the inquiry into matters that are collateral but may shed some light on the others. Go ahead.

The Witness: Read the question, please.

The Court: Read the question.

(Question read by the reporter.)

A. I do not know of any stations at the moment that are handling our gasolines as well as, in addition, gasolines of some other supplier.

By Mr. Dixon:

Q. You were, I believe, Mr. King, divisional manager for the southern district of Richfield in 1938, were you?

A. Yes, sir.

[fol. 1241] Q. Do you know whether there were any split pumps, as we have used that term, in your division that were being served by Richfield at that time?

A. If I can correctly recall, I think that we were serving some split pump stations in 1937 or 1938.

Q. It is a fact, is it not, Mr. King, that Richfield has not supplied petroleum products to any split pump in any of the three types of outlets that we have referred to since 1938?

A. That is a difficult question to ask, as my memory—a long period of time.

The Court: Well, if you can't, just say so. If you can, answer it.

The Witness: I do not believe I can answer that question authoritatively.

By Mr. Dixon:

Q. Well, do you know of any of that kind?

A. I can't readily recall any, no.

Q. It is a fact, is it not, that around June of 1938, when you were supervisor in charge of the southern district, that you were advised that it would be the policy of Richfield from that time on not to serve any such outlets which had split pumps? Isn't that a fact?

A. Somewhere around or near those years, 1937 or 1938, I do recall that there were instructions along those lines, but I can't recall the exact instructions at the moment.

[fol. 1242] Q. But, as vice-president in charge of marketing you know as a fact, do you not, Mr. King, that that is the policy of Richfield at the present time?

A. Now, I am going to ask you to be a little more explicit, Mr. Dixon.

Mr. Dixon: Do you understand my question?

The Witness: Well, you might restate it, if you please.

Mr. Dixon: I will ask that it be reread.

(Question read by the reporter.)

Mr. Dixon: Do you understand my question, Mr. King?

The Witness: Are you referring to our sale of gasoline to split pump stations or——

Mr. Dixon: That is right.

The Court: This question is tied to the other question. In other words, he is asking you if it is not a fact that your policy is not to supply split pump stations. Didn't I interpret your question correctly?

Mr. Dixon: You did, Judge, yes.

The Court: I did not mean to mislead.

Mr. Dixon: That is correct.

A. It is our experience——

Mr. Dixon: If the court please——

The Court: No. Wait a minute. No, no. You can answer that and give a reason. I know you probably have a good excuse. If your answer is "yes," you probably have a good [fol. 1243] excuse, which I will let you give. But he is entitled to a specific answer on that.

The Witness: All right. Please read it again, sir.

The Court: Then you can explain why, if it is one way or another.

The Witness: Thank you, sir.

(Question read by the reporter.)

A. We do not solicit the business of split pump stations——

Mr. Dixon: May I have an answer to that, please?
The Witness: I think I have answered it.
Mr. Dixon: I did not get the answer if it was "yes."
The Court: It is not a question of soliciting. The question is: Do you supply them? If your answer is "yes," then you can explain and give your reason.
Mr. Paradise: I do not think the witness understands the question, your Honor. The question is: What is the policy?
The Court: I think he does. I think he is afraid of giving an answer that might tie him to a legal conclusion. That is all right. He is a cautious man and that is all right.
The Witness: The question was?
The Court: If it is the policy?
The Witness: To supply split pump service stations?
The Court: To supply split pumps.

A. It is not our policy to supply or solicit the business of split pump service stations.
[fol. 1244] The Court: That is all right. You get "yes" in. That is all right. Now if you want to add anything, you may. You started to say a while ago: It is our experience. Now I will let you finish.
The Witness: Thank you, your Honor. In explanation of that policy, it is our experience that there is probably not over one or two per cent of all the service stations in operation today that are operated as split pump service stations. We further know from our observance and experience that those stations are probably the least desirable for our business because of, we will say, location, the type and character of their improvements, their buildings, their equipment, and the service that they render. In other words——
The Court: And the type of products they sell, is that it?
The Witness: Well, we are always happy to find good customers, your Honor, but——
The Court: Yes, I mean the goods. In other words, the other things they dispense.
The Witness: In other words, your Honor, it is not busi-

ness that measures up to the standards that we have set for the type of representation that we want for our company.

The Court: It sounds like some of the grounds for restrictive covenants. All right.

Mr. Dixon: Let me ask that this be marked as Govern-
[fol. 1245] ment's 9 for identification, and we offer Government's Exhibit 9 in evidence.

(The document referred to was marked Plaintiff's Exhibit 9 for identification.)

Mr. Paradise: May I object to this offer, if the court please? I would like to have the court see it before he listens to our objection.

Mr. Dixon: Yes. I want the court to see it, too.

The Court: All right.

Mr. Paradise: The objection, your Honor, is not based on relevancy, because I admit that this is relevant to the general background of this matter as a matter of historical interest, the same as Mr. Dixon said yesterday when introducing some old forms before 1941. I think he said at that time when introducing——

The Court: This is June 1948.

Mr. Paradise: No. This is June of 1938, your Honor.

The Court: The recognizance does not show any date at all except the "8."

Mr. Paradise: Can you state, Mr. King, after looking at that whether it is 1938 or 1948?

The Court: His eyesight may be better. Maybe I had better use that big magnifying glass I just gave you. I do not see any date there. How can you tell the date on that? There is no date except the "8" that came through the typewriter.

[fol. 1246] The Witness: No, I can see that you can't. Let me read the letters.

Mr. Paradise: Did you answer the question, Mr. King.

The Witness: Not yet. I am looking.

The Court: He is looking for the date. The letter does not indicate the date.

The Witness: There is no date. That is——

The Court: Just an "8" is all there is.

The Witness: It is impossible to determine whether it should be 1938 or 1948, but from the contents of the letter

and the people it is addressed to, I would date the letter on or about 1938. Certainly it is not '48.

Mr. Paradise: Do you recall that you received that letter when you were in the capacity of a division manager?

The Witness: Yes, I recall receiving this and those are the instructions that I recalled a little while ago to Mr. Dixon that I remembered receiving.

Mr. Paradise: From your capacity, do you recall whether the date was 1938 or 1948?

The Witness: Well, it would be '38, not '48.

The Court: All right.

Mr. Paradise: Your Honor, when Mr. Dixon yesterday offered Government's Exhibits 3, 3-A and 3-D, he said that these are the documents that relate to the 3-C arrangement in existence prior to the war and concerning which we are [fol. 1247] submitting those only as background material. But yet——

The Court: Well, I will so limit it.

Mr. Paradise: But I most sincerely submit that it is relevant but it is not material.

The Court: The question is this: I realize, gentlemen, at times we cover too much ground. I have tried in these cases, both in Government cases and private cases, to draw a line.

During the noon hour I was working on some interrogatories in a private antitrust case which is to follow this one, and in that case, right from the very beginning, I drew a distinct line beyond which I was not going to go, but did it only for the purpose of preliminary. I did not freeze the date absolutely.

So I agree with you that what happened in '38 does not concern us, because I as a chancellor am interested in what is happening today, and whatever decree I render must be effective as of the day it is rendered and relate to conditions. But just because of that, it works sometimes two ways. For instance, in an equity case you can bring up conditions to the time of trial to any amended pleadings. Now, that, of course, is the rule now in all civil cases. But in a case like this, especially at this stage, at times in order to show a continuity of policy it is necessary to go back a little into history. If it were not for that, I would agree with [fol. 1248] you that it may not shed any light, but I can't

tell. That depends. It is only the second day of a case that is going to last several weeks. So, if you want me to reserve the right to strike this at the conclusion of the Government case, I will do so. But, at the present time, I say—not purely as background—but where the Government insists that it is a continuing policy, to go back to the inception of the policy is not objectionable in itself, leaving for the Government to tie it up later on. If they do not tie it up and they do not show any practices since that time, and it negatively or it positively should appear as a fact that that is abandoned, then it will show.

Mr. Paradise: I think your Honor has expressed it better than I could. The matter has not been tied up yet, and we are aware of your Honor's article, "Observations on Anti-trust Procedure," 10 Fed. Rules Decisions 165, where you state the important danger is letting it in evidence without it being tied up.

The Court: That is right. And in that respect my view differs entirely from some of the eastern judges, and that is why some of the men who are trying cases, Mr. Dixon and others, have referred to this article. This article was written at Urbana, Illinois on my way back from my first conference last year, and the reason why they were so surprised I had such good information is that Mr. Dixon opened the [fol. 1249] files to me and gave me a lot of up-to-date data on some of the pending cases.

But I agree that at times too much is left suspended in the air, and as a trial judge of nearly 25 years I try to avoid the general policy of leaving everything in the hope it will be tied up.

We will probably reach a stage when I will say: "Begin tying right now," as I do in criminal cases and mail fraud cases and the like. But you cannot, right at the beginning of a case, draw the lines too strictly lest you do injustice to the inquiry and into the endeavor to discover the policies of today.

So, with that understanding, I will overrule the objection and allow it to be brought in.

Mr. Dixon: I think my next question, your Honor, which I was about to ask as soon as it was admitted, may tie it up.

Q. Handing you Government's Exhibit 9, Mr. King, did you ever receive any written notice from Mr. Dinkins commenting or changing the instructions submitted to you in Government's Exhibit 9?

The Court: At any time since the receipt of that?

Mr. Dixon: At any time since the receipt of that instruction, yes.

A. No. I do not recall that these instructions were ever rescinded. In fact there was no need to. The contents or [fol. 1250] the instructions contained in this letter just became meaningless as time went along.

The Court: All right. Maybe, like the English, they never repeal a law. They just let it die.

The Witness: Well, that is true lots of times, your Honor. But I mean in this case to convey the fact the character of your trade and your business changes and, as time went along, these instructions hold no weight. They did not amount to anything.

The Court: All right.

By Mr. Dixon:

Q. Do you have any particular type of description for the operators of these three different outlets that you use generally, Mr. King?

A. Well, we refer and we use the term "operator" for those individuals operating our leased out service stations, and as far as all other types of dealers are concerned we refer to them as independent dealers.

The Court: The others, the first group, is the group we have been talking about as L-O, leased out?

The Witness: Yes, sir.

The Court: That is the group you refer to?

The Witness: The first group, we refer to the individuals as operators who operate the leased out stations.

The Court: Leased out stations.

The Witness: All other dealers, we refer to them, regard- [fol. 1251] less of the contracts that they are on, as independent dealers.

The Court: Independent. All right.

[fol. 1252] Q. In this advertising of Richfield products, did you make any distinction between advertising for an

L-O operator or dealer, or the operator or dealer who was conducting his business under the 3-C or 337 type of arrangement?

A. No, Mr. Dixon. All of our advertising, whether it be newspapers, billboards, or service station material, giveaways, as we call them, pamphlets, literature, is all distributed equally among all classes of accounts.

Q. Insofar as the public is concerned, in connection with your advertising are all three operators of these outlets referred to as independent Richfield dealers?

Mr. Paradise: Oh, I object to that, if the court please, for lack of foundation.

The Court: So far as he knows. He may answer. It is a general question. Of course, he will have to have his attention called specifically. Go ahead.

The Witness: Would you read the question, please?

(The question was read.)

The Witness: I can't recall that we refer to them all as independent dealers in our advertising which goes on daily over the radio, and so on. We might refer——

The Court: That would cover, you know, those pictures in the newspapers of a man in overalls, middle-aged, and quite nice looking, looks as though he was in the First World [fol. 1253] War, and there you say, "This is the type of man who serves you."

The Witness: We refer to them as "Richfield dealers," your Honor, in all of our advertising.

By Mr. Dixon:

Q. So that in your advertising——

The Court: You know, I see a lot of advertisements.

By Mr. Dixon:

Q. So then I take it, Mr. King, Richfield does not conduct an advertising program just for the benefit of one type of dealer among the three types that we have referred to; is that correct?

A. That is correct. Our advertising is intended for all of these operators and dealers.

Q. And in referring to——

The Court: Well, you have an interest in all three types, and, therefore, you do not distinguish, regardless of any legal distinction, between the type of relationship as between you and these three in your advertising, and you treat them all alike.

The Witness: Well, we would be very foolish, your Honor, if we didn't.

The Court: And you give them the benefit of whatever good will you are creating through your advertising?

The Witness: That is exactly right. For example, we give away wildflower booklets, maps, wildflower seeds, and Christmas Carol booklets, and those are given freely to all [fol. 1254] our dealers, regardless of the contractual arrangements or connections.

The Court: And those wildflower booklets have become an institution in California, so that people look to Richfield stations to find out when the wildflowers will be in bloom in certain parts of the country.

The Witness: I am glad to hear you say that, your Honor, because we feel much the same way.

The Court: All right.

By Mr. Dixon:

Q. Do any one of the operators of any one of these three different types of outlets that you have described receive any salary directly from Richfield?

Mr. Paradise: Objected to as immaterial, if the court please.

The Court: I beg your pardon?

Mr. Paradise: I say I object to that on the ground of materiality. The defendant has not contended any relationship of employment on a salary basis. There is no issue of that sort.

The Court: I don't think that is necessarily so. That is a part of the evidence in determining the relationship. The manner of compensation may have a bearing on it. Overruled.

The Witness: Will you read the question, please?

(The question was read.)

[fol. 1255] The Witness: No, sir.

The Court: Do you guarantee them a minimum of any kind in any form?

The Witness: No, sir. No, your Honor.

By Mr. Dixon:

Q. So that the only source of his income from the outlet in which he works or which he operates is from the sale of the products at that outlet; is that correct?

Mr. Paradise: I don't want to interfere with this examination, if the court please, but I think that the prior question referred to all three outlets.

Mr. Dixon: It did.

Mr. Paradise: And I was going to ask that, in the interests of clarity, the question be separated as to the separate classifications; that is, I think, in all fairness to the witness.

Mr. Dixon: Well, if the court please, I am trying to shorten it. If the answer is "No," he can say so.

The Court: I think it is a preliminary question. If you can answer it, "No," then we will be guided by that.

The Witness: We do not pay a salary to the operators of L-O stations, nor to any independent dealer who purchases our products under contract.

The Court: So far as you know, then, the only source of income is the profit he makes on selling the products in [fol. 1256] the station, whether they are yours or someone else's?

The Witness: Well, your Honor, whether he be an operator or an independent dealer, he has many other sources of income, as you may know, other than the sale of products, whether they be petroleum products of the company or not. He has numerous services that he renders.

The Court: That is right. He may have a repair shop in conjunction——

The Witness: Correct.

The Court ——or may merely do ordinary servicing?

The Witness: There is quite a ramification——

The Court: He may service tires, take them off and put them on, and fix a leak, or something?

The Witness: It is not unusual for many such dealers to earn more from services than they do from the sale of products.

The Court: Than from the sale of products. All right.

By Mr. Dixon:

Q. Does Richfield reserve the right, to your knowledge, to control the physical conduct of any of the operators of any one of the three different types of outlets that we have referred to?

A. Just what do you mean by "physical conduct"?

Q. Tell him when he must come to work, and what he must do while he is working at the station?

A. With respect to—are you finished?

[fol. 1257] Q. If that is enough to indicate what I mean.

A. Yes.

The Court: I think some of the contracts provide the hour when they shall be open, if I remember correctly.

Mr. Dixon: One of the very early ones, but that was removed, your Honor.

The Court: All right.

The Witness: In the case of our leased out stations, yes, we instruct the operator as to his conduct of the station, as to the manner in which the station shall be maintained, and the state of cleanliness, its appearance, and so on.

With respect to all other types of dealers, with respect to the dealers purchasing our products under the 3-C and 337 contracts, we do not exercise any direction over their conduct or station.

The Court: Let me ask you one question in conjunction with that. All of them are required to honor Richfield cards, all three groups?

The Witness: Yes, your Honor. We supply them with all the necessary forms so that they can extend credit.

The Court: If you carry a card?

The Witness: If anyone carries a card, yes, sir.

The Court: Now, as to those, as to the credit extended, you give him credit whether you collect or not? In other [fol. 1258] words, you have the responsibility for loss on the credit he extends on those cards?

The Witness: Yes, we do. If he has honored a card that is currently valid,——

The Court: That is right.

The Witness: ——and if the account is non-collectible, that is Richfield's loss.

The Court: Then as to all others, if he extends credit to others,——

The Witness: Yes.

The Court: ——that is his responsibility?

The Witness: He can extend all the credit he wants to, yes.

The Court: So the only current accounts, the only accounts on which you save him harmless from loss is in case some of those accounts turn sour?

The Witness: That is right.

The Court: I mean the accounts on Richfield cards turn sour?

The Witness: Once he has made a sale on a current or valid Richfield credit card, it is entirely at our risk.

The Court: That is what I mean. The lawyers know what I have in mind. Probably you do not. I don't know whether they do, but I have a special reason for asking questions. Go ahead.

[fol. 1259] By Mr. Dixon:

Q. Does Richfield reserve the right to direct the number, time, or details as to any employee of any operator of any one of the three different types of outlets referred to?

Mr. Paradise: I think that is a question as to a conclusion of law, if the court please.

The Court: No. That does not call for a question of law. It calls for a fact. Go ahead.

The Witness: Would you repeat the question, please?

(The question was read.)

The Witness: In the case of the operator of our leased out stations, he is the only individual that we give instructions to. As to the number of people he employs, or his directions to them, that is entirely up to him.

With respect to the independent dealers, we issue no instructions. The operation of his station is his entirely, any way he sees fit. He can close it up and go fishing, run it at night, or run it at day, or any way he sees fit.

By Mr. Dixon:

Q. But under the 3-C type of deal if he did that you could cancel out his sales contract, couldn't you, and take over the operation of his station?

Mr. Paradise: I submit——

By Mr. Dixon:

Q. Isn't that a fact, Mr. King?

Mr. Paradise: I submit that is improper——

Mr. Dixon: I ask that question, Judge, because the wit-
[fol. 1260] ness went beyond the question.

The Court: I see.

Mr. Paradise: I still submit that is improper examination by the government.

The Court: It calls for a conclusion.

Mr. Dixon: It does, your Honor.

The Court: I sustain the objection to the form, because it calls for a conclusion. However, you might ask him if, as a fact, they have done that in cases where a man should be dilatory, develop bad working habits, and neglect a station, and so on, and so forth. You might ask him if in fact they did that, because ultimately it is not what power they have, it is what they do that represents control or lack of it.

By Mr. Dixon:

Q. Do you know of any situation, Mr. King, in the 3-C type of deal where Richfield Company has canceled its sales contract with the operator of the outlet and taken over the station.

A. I know of no case where we have ever taken over the station that we have sold products through under a 3-C proposition.

The Court: I mean for objectionable methods of business?

The Witness: That is right, your Honor. In other words, the only time——

The Court: I mean an unclean station, or discourtesy, or
[fol. 1261] anything you might be dissatisfied with.

The Witness: Your Honor, the only time that—we have never taken over any such station. We have never taken

over any such station, regardless of what the conduct of the operator was, how he ran it, or how he failed to run it.

The Court: But you have, I assume, admonished a man who developed habits that might reflect upon you indirectly to mend his ways, have you not?

The Witness: Well, it is natural——

The Court: I won't put it that way. I will not say "have you not," because that implies I know what the answer will be. I don't. You know, the most ignorant person when you start a law suit is the judge. He only becomes educated as you go along, that is, as to facts.

The Witness: Yes, sir.

The Court: Therefore, my questions are motivated by a desire to secure information. Sometimes your own attorneys or the attorneys on the other side ask questions because they wish to bring out specific facts. I don't know what those facts are. They probably know, or hope they know.

The Witness: I think I can answer your question in this way, your Honor. We have people—our salesmen are the people who are in contact with the 3-C dealer. He may suggest and recommend to that individual, "Why don't you [fol. 1262] clean up your place of business? Your restrooms are terrible. Why don't you get all that rubbish out of the way? Your competitor gets his out and he has all the business." In other words, sales aids. But he is free to accept them or reject them, and if he rejects them, that is where it stops, right then and there.

The Court: All right.

Mr. Dixon: Have you finished, your Honor?

The Court: Yes, I have finished.

By Mr. Dixon:

Q. Does Richfield pay any social security taxes to the government on any one of the operators of any one of the three different types of outlets?

Mr. Paradise: Objected to on the ground of immateriality.

The Court: Overruled.

The Witness: No, we do not.

By Mr. Dixon:

Q. Does Richfield pay any industrial compensation taxes or insurance or premiums on any operator of any one or all of the types of stations that we have referred to?

Mr. Paradise: The same objection.

The Court: Overruled.

The Witness: No, we do not.

The Court: I think that should be preceded by a question: Does Richfield list with the State Department of California, or in any other *other* states which have a similar proposi-[fol. 1263] tion, any of these operators of these stations as employees as to which compensation insurance applies?

The Witness: No, we do not, your Honor.

Mr. Dixon: Thank you, your Honor.

The Court: You want credit on that, do you?

Mr. Dixon: No, your Honor. You take the credit.

The Court: Young lawyers sometimes say—you are not young—they usually say, "I was going to ask that question." That is true especially if they have as clients women clients. So I always say, "I will give you credit for it in the record."

By Mr. Dixon:

Q. At your Honor's suggestion, I will now ask, Mr. King, whether Richfield lists any of the operators of any one of the three different types of outlets with any of the Unemployment Commissions operating in any of the states in which Richfield operates.

Mr. Paradise: May the objection go to this entire line——

The Court: Overruled.

Mr. Paradise: ——of questions without being repeated?

The Court: Yes. Overruled.

The Witness: Please read that again.

The Court: He is asking the same question I asked you about, and he is talking about Unemployment Commissions.

(The question was read.)

[fol. 1264] The Witness: No, sir.

By Mr. Dixon:

Q. It is a fact, is it not, that Richfield recently approved and adopted a pension program for all Richfield people?

A. Yes, Richfield has a pension program.

Q. Are any of the operators of any of the three types of outlets before described eligible for that pension program of Richfield's?

Mr. Paradise: I object to that on the ground of lack of foundation. If this refers to a written plan which has to do with a description of particular types of persons available within several classifications, I object to the question on the ground of lack of foundation and not the best evidence.

The Court: I think we are just trying to find out whether they are included, not the details of the plan. In other words, you understand that he is asking these questions in order to cover the criteria by which usually the relationship of employer and employee is governed, and he has a right to anticipate your argument by showing that none of the indicia by which you determine the relationship of employer-employee exists in these cases.

Mr. Paradise: I appreciate that, but counsel's questions seem to be deliberately broader than an employer-employee relationship. He referred to a pension plan covering Richfield people.

[fol. 1265] The Court: A pension plan may cover others, that is true, but I will overrule the objection. Some of the companies are supplementing the social security benefits by private pensions, realizing perhaps that social security benefits are insufficient for the present, at least, with the change in valuation of our money, and do not amount to very much. So it is proper to inquire whether the pension plans are made available to certain groups. Overruled.

The Witness: Will you read the question?

(The question was read.)

The Witness: No, sir.

By Mr. Dixon:

Q. Insofar as the operators of all three types of these stations are concerned, they are independent and they are

not recipients of any of the things that you have just previously mentioned, Mr. King; is that correct?

Mr. Paradise: I object.

The Court: No, that is not proper. That is a summation. You don't have to summarize.

Mr. Dixon: All right.

By Mr. Dixon:

Q. Mr. King, do you approve or look over the advertising of the company?

A. Yes, the company's advertising comes under my general supervision.

[fol. 1266] Q. You have had submitted to you, have you, at various times advertising for Richfield in which reference was made to the "independent Richfield dealer"; is that correct?

Mr. Paradise: Objected to as not the best evidence.

The Court: It is a general question along the same lines I asked a while ago, you know, where they show a picture of a very nice middle-aged gentleman with a brush mustache, and say, "He is the kind of man who serves you at Yakima."

The Witness: "Your smiling dealer."

The Court: That is right. All of them do.

I will say one thing for your company. You didn't try your law suit in the newspapers, the way some of the other companies are doing. I have seen recent advertisements that talk about a trial or in anticipation of a trial, and talk about the antitrust laws trying to ruin businessmen. I haven't seen any of that kind by the Richfield Oil Company. I hope there isn't anything in existence. But I have seen some of them by other companies who have pending law suits in this very court. But not in my department, gentlemen, because they would have heard from me if that had happened. We are talking about legitimate advertising. So if you have seen the other kind, why, we are not trying to trap you into admitting that. We are talking about legitimate advertising that you put out about this type of man I referred to.

[fol. 1267] The Witness: In answer to your question, Mr. Dixon, it is quite possible that in past years we may have

used the expression "independent dealer" in some of our advertising, but I can say that is quite a number of years past. It is my firm recollection that in advertising, when we refer to dealers, we refer to them as "Your Richfield dealer."

By Mr. Dixon:

Q. Do you recall any advertising by Richfield in the early part of last year, in the months of February or March, of 1950.

A. Well, we are advertising continually.

Q. The question is preliminary, Mr. King. I appreciate it is rather broad.

Is it a fact, if you know, that on or about February 21, 1950 your advertising carried over the ABC network read as follows, among other things, "Your independent Richfield dealer personally backs every lube job he performs for a full 1,000 miles"?

Mr. Paradise: Objected to.

By Mr. Dixon:

Q. (continuing) And on March 8, 1950 the following was contained in your advertising, "Tell your independent Richfield dealer to drain and refill your car with Richfield premium motor oil."

And on March 9, 1950, the advertising over the ABC network was as follows, "You can get your wildflower [fol. 1268] booklet from your independent Richfield dealer." Now, with reference to the wildflower booklet, Mr. King, did you want the listeners who heard that advertising copy to believe that they could only get it from the 3-C or the 337 type of outlet?

A. The answer to that question——

Mr. Paradise: Objected to as immaterial.

The Court: Overruled.

The Witness: Why, of course not. As I explained previously, we distribute all of that advertising material through all of our dealers and operators, and if the expression "independent dealer" was used there, which probably was done, well, I would say it was just—it was not of

moment to us at the time, because our general reference to our accounts is "Richfield dealers," regardless of what the proposition is.

By Mr. Dixon:

Q. Would you say that——

The Court: The idea, of course, is to impress upon the public that these men have a stake in the business, and they are not merely employees? Isn't that the way it is?

The Witness: I think that is the origin of that idea, yes. I mean——

The Court: They have a stake in the business, and they are not merely employees, and your patrons are helping to build them up. I mean, in these advertisements you are not [fol. 1269] saying that they are helping build up a large company, but they are helping people to lead an honorable life of their own, and that is the idea?

The Witness: I think that is the origin of the approach, which is quite——

The Court: To appeal to the love for the American type of doing business?

The Witness: Which has been quite generally used, and we do feel ourselves that these men are operating on their own.

The Court: All right. Go ahead.

Mr. Dixon: Counsel has agreed, your Honor, that the quotations given——

The Court: You didn't give him a chance to answer. You asked about three quotations, and before he answered you propounded another question, and he answered the last question, but not as to the three quotations remaining, as to whether he remembered the three advertisements. It was all your fault. That is why those three questions were not answered.

Mr. Dixon: You are quite right, your Honor. I intended only to ask one question.

The Court: That was an awfully broad question.

Mr. Dixon: It was.

The Court: It would take a Philadelphia lawyer to answer [fol. 1270] that one correctly. He answered the last one.

He picked you up on the last one. What did you want the witness to do? Let's not read them again.

You heard what he said about referring to dates when these three advertisements were given. Do you have any knowledge of whether those advertisements were contained in the commercials of the company?

The Witness: It could be, your Honor. I don't have any direct knowledge that they were or were not in there, in the broadcast.

Mr. Dixon: I was about to say, your Honor, that counsel have stipulated that they were contained in the advertising broadcasts over the ABC network on the dates specified.

The Court: All right. Let me see. What were they advertising then? What program was it?

Mr. Dixon: The Richfield news program at 10:00 o'clock.

The Court: Oh, the Richfield reporter.

Mr. Dixon: Yes.

The Court: I hear him too. All right.

By Mr. Dixon:

Q. I believe yesterday, Mr. King, you were asked to review the situation concerning certain distributors of TBA products which you said dealt in items competitive to those supplied by Richfield.

The Court: That is a new topic.

Mr. Dixon: Judge, this is my last question.

[fol. 1271] The Court: All right. Go ahead.

By Mr. Dixon:

Q. Did you have an opportunity to go over that, Mr. King, so that you could give us the names of any such distributors at this time?

A. You refer to your question yesterday, Mr. Dixon, about TBA distributors,—were there any—did I have any knowledge of any TBA distributor who handled or distributed or sold competitive tires and tubes? Wasn't that your question?

Q. Yes.

A. Yes, I have some information on that.

Q. Will you give us the names of those distributors, Mr. King, please?

A. The first is Hugh Titegen, Los Angeles.

Q. What is his address, Mr. King, please?

A. I am sorry, I didn't bring it, but we will get that for you in all cases here.

Q. You will give it to us?

A. He has been a TBA distributor since 1946, and, to our best knowledge, we know that in 1946, 1947, 1950 and 1951 he has distributed tires and tubes other than the brand which Richfield sponsors.

[fol. 1272] The Court: By the way, what is the brand of tires of Richfield?

The Witness: Goodyear tires.

The Court: Goodyear tires.

The Witness: And the second is——

By Mr. Dixon:

Q. May I ask when those facts came to your attention, Mr. King?

The Witness: What did you say, sir?

By Mr. Dixon:

Q. May I ask when those facts came to your attention?

A. I am aware of facts like this right along. They did not come to my attention, we will say, yesterday, Mr. Dixon, but in following the conduct of our business and our operations I am familiar with these things.

The Court: You get the information and have crystalized it into this form?

The Witness: I confirmed the information. That is correct, your Honor.

By Mr. Dixon:

Q. In other words, this was not a direct request to you, I take it, from the distributor that you have named to carry those products?

A. Oh, no, not any direct request from me, but knowledge that has come to me, information, that has come to me, through my organization in what is currently going on, and in answer to your question of yesterday, where I said that [fol. 1273] I knew, or in answer to your question——

Mr. Dixon: That is correct.

A. ——I denied, rather, that these distributors had not handled anything other than our sponsored tires.

The Court: All right, let us go on.

A. The second one, George Stearn, Hollywood—we will give you all of the addresses afterwards, Mr. Dixon.

Mr. Dixon: Thank you.

A. ——has been a TBA distributor since 1944. We know that in every year since that time he has purchased competitive tires and tubes.

Q. What brand, do you know, Mr. King?

A. Well, I would say that probably several, three brands of tires and tubes.

Q. Maybe I can shorten this just by asking one question. Did you get this information, Mr. King, from the distributors' reports, Exhibits, I believe, numbered 8?

A. No. That report covers only our approved line of TBA.

Mr. Dixon: All right.

The Court: You do not make them put into the reports other brands they may have?

The Witness: Oh, no. Oh, no.

By Mr. Dixon:

Q. May I ask where you get the information that you are now giving us and the names?

[fol. 1274] A. Yes. We have representatives who are working with our distributors or who are our contact people with the TBA distributors. This information comes through them, and through channels to me.

Q. That was given to you by the representatives, either yesterday or this morning, before you came into court?

A. Yes. I referred to many bits of information in the past that have come to me and requested that I have this information for you so I could have it for you.

The Court: All right, go ahead.

A. The next is Bunnell, Hawthorne, just outside of Los Angeles here, has been a TBA distributor since 1948 and has distributed other tires than Goodyear each year since that time.

John Webster, Van Nuys, has been a TBA distributor since 1949 and has purchased other tires in each year since his appointment.

And Vern Nevitt, Glendale, has been a TBA distributor since July 1950 and has handled and distributed other tires than Goodyears in that time.

The Court: All right.

By Mr. Dixon:

Q. Does this just relate to tires, Mr. King?

A. Yes. I believe that was our question yesterday, wasn't it, Mr. Dixon?

[fol. 1275] Q. No. Competitive items was the question.

The Court: Well, the other items.

Mr. Dixon: Tires have been in short supply, your Honor, and that is the reason.

The Witness: I understood your question to be tires and tubes, because we talked about it yesterday and I——

The Court: Well, all right. Does the same pattern exist as to other items that can be classified as of the TBA group?

The Witness: Yes, it does, I can say that they do.

The Court: All right.

By Mr. Dixon:

Q. The names that you gave us, Mr. King, related only to tires, is that correct, and tubes?

A. Yes, because that is what I thought your question was directed to yesterday.

Mr. Dixon: I hate to impose upon you, but I would like to ask you to check your records and give us the names tomorrow, through counsel—it won't be necessary for you to be here—the names of any other distributors handling any other competitive items, if you will do that.

The Witness: Yes, sir.

Mr. Dixon: Judge, we will excuse this witness at this time, reserving the right to recall him. There are several other witnesses from outside the state that we would like to accommodate, if possible, before the end of the week.

[fol. 1276] The Court: All right. You, of course, have the right to ask any questions you desire at the present time in

amplifying the testimony as given, or if you want to reserve it until a later time, whichever you want.

Mr. Paradise: I would prefer, if the court please, to reserve the examination of this witness until part of our case because I think it will make a more coherent story to the court.

The Court: That is true, except I want you to know this: Ever since I was in the Superior Court and worked back to 2055, I have taken the view that this evidence is in the record. You see, while it is under cross examination, it is there, and it does not mean that when your turn comes that you are going to start all over the same thing, you know. Some misconceive the object. In other words, you can put him back. You can either examine him now or put him back later, but I am not going to allow you to go over this entire thing on your own terms, as some lawyers want to, because this evidence is the record.

And incidentally, except for a motion for a nonsuit, the law is that this evidence may be considered the basis for a finding either in your favor or against you.

Mr. Paradise: I appreciate that, your Honor.

The Court: I just want to have an understanding because some of you may have had more experience in my court, [fol. 1277] and each of us has his own methods. One of the things I insist on is following the rule that this examination is not just a test in dialectics, you see, that it is evidence in the case which is not binding on them. They can contradict it, but as far as you are concerned it is binding on you because he is your agent. And therefore you are not allowed to go over the same thing but you may amplify it.

The reason I do that is that some attorneys say, "Well, I want to examine him on my own terms." I have said, "Oh, no, not in my court."

All right.

Mr. Paradise: In response to your Honor's suggestion, there would be some necessary, perhaps small—I won't say to the extent—duplications of the subject matter.

The Court: That is right.

Mr. Paradise: By our examination, because, after all, we have this problem of these stations.

The Court: That is true, that is true. Yes, that cannot be avoided, but what I am trying to arrive at is my under-

standing of the rule. The object of allowing the adversary to be brought in, if he is a managing agent, is to secure disclosure. The Government may contradict the facts, and insofar as they are not contradicted they are evidence in the case which are binding and on which a finding can be based.

Mr. Paradise: If I understand your Honor's statement, I [fol. 1278] would like to ask Mr. King a few questions after the recess merely for the purpose of clarifying some matters in yesterday's record, and then reserve his examination until part of our case.

The Court: All right.

(Short recess.)

Mr. Paradise: Will you resume the stand, Mr. King?

Cross examination.

By Mr. Paradise:

Based on our discussion immediately prior to the recess, your Honor, I will ask Mr. King matters only concerning three short subject matters in order to straighten out any apparent conflicts in the record.

Q. Mr. King, you testified yesterday—and I am referring to page 63 of the transcript—in answer to a question of Mr. Dixon's as to how many distributors of automotive accessories or products Richfield has. Your answer—and I will read it:

> "I don't know exactly, but I would say we have in the neighborhood of fifty."

My question is to which distributors did your answer relate?

A. My answer related to those distributors whose sole activity or function is TBA. I should qualify my answer of yesterday and add to that approximately 175 to 200 commission agents who are functioning as TBA distributors.

[fol. 1279] Q. Then, it is correct that as TBA distributors, either as commission agents who are also TBA distributors or exclusively TBA distributors, that there is a number in excess of 200?

A. In excess, somewhere between 200 and 250.

Mr. Paradise: I might state to the court we have a stipulation with counsel as to the names and exhibit numbers. I just did not want the record to have an error.

The Court: All right.

By Mr. Paradise:

Q. On page 72 of the record of yesterday's examination Mr. Dixon asked you:

> "And Richfield also sells some TBA products directly to retail outlets, does it not?"

And your answer was "no." He then asked you:

> "That is, there are no sales by Richfield of any TBA products direct to retail outlets?"

And your answer was "no, sir." And the question was:

> "You are certain of that."

And your answer was: "I am positive of that."

Did your answer relate to tires and batteries, or to accessories?

A. Well, I was thinking of the entire, the complete line, tires, batteries, and all automotive accessories.

Q. Have you since searched the——

A. Yes. I should amend my answer of yesterday and state that we do sell tires and batteries only—tires, tubes [fol. 1280] and batteries only to approximately 25, maybe 28 dealer accounts.

Q. Is there some reason why sales are made to these particular accounts?

A. Oh, yes. These dealers in themselves have exceptionally large volume of business that they are entitled to or command the same discounts were they solely engaged as distributors.

Mr. Paradise: I might also add, your Honor, that we have a stipulation with the Government concerning the names of those stations and the volume of that, and the reason for this examination is to correct this in the record before we pass it too far.

On page 77 of the transcript, Mr. King, the question was asked by Mr. Dixon concerning company operated stations, which, on page 75, you defined as stations operated by individuals in the employ of the company owning the stations. Mr. Dixon's question on page 77—I think it goes back to page 76—Mr. Dixon asked when Richfield ceased operating that type of station. You had already testified that Richfield had operated a few stations that fell in that category. Your answer to the question of when was, on page 76:

> "Well, the last that I recall was possibly seven or eight years ago."

Mr. Dixon then asked:

> "That would be about 1942?"

[fol. 1281] And your answer was: " '42 or '3, somewhere in that time."

What I have said up to now is preliminary. The next question was this:

> "You say prior to that time, that is, prior to 1942, about 1942, and from the period of the commencement of the operations of Richfield, it operated about how many company-operated stations?"

And your answer was:

> "Oh, I don't suppose there were ever more than 30 or 40 at any one time in operation on that basis."

Do you know when the period of company-operated stations by salaries employees, as you testified to, started?

A. It started in 1942 as a result of the calling to the services of numerous operators, which left us with so many stations that would either close up or we had to find some means of maintaining them in operation. So we placed some of our own salaried merchandisers in these stations to keep them in operation, to give us time to find operators. We augmented, we helped those merchandisers out by employing people to assist them. But it was soon evident that operators were leaving us so rapidly as a result of the draft, the military demands, war plant demands, that it was just

impossible to keep up with it. So we abandoned the plan of trying to keep the stations open, entirely, in a matter of months, and thereafter went on through the war period. If [fol. 1282] we could not find an operator for a station, why, it remained closed.

Q. Then you did not intend the impression that the matter or plan of company-operated stations with salaried employees started back in 1937?

A. Oh, no.

Q. And continued and ceased in 1942?

A. Oh, no. It commenced or was completed in a matter of months, in 1942.

Q. Then the number of stations that were so operated that commenced in 1942 continued for how long?

A. I would say not over four or five months.

Q. And what happened to those stations when you ceased that plan?

A. If we did not have an operator for them, they were closed.

Mr. Paradise: That is all. Thank you, your Honor.

The Court: Any questions, Mr. Dixon?

Mr. Dixon: Just one.

Redirect examination.

By Mr. Dixon:

Q. Richfield does not operate any company-operated stations since they closed those stations you just described, have they?

A. You are speaking now when you say "company," you mean salaries operated stations?

[fol. 1283] Q. Yes.

A. I testified yesterday that we did not operate any salaried stations. I possibly could mention one. That is the garage in our office building, but I look upon that as a garage rather than a service station. We, of course, operate that.

Q. But that is the only one that would fall within the classification of company-operated stations?

A. Yes, sir.

Mr. Dixon: Thank you.

The Court: All right, Mr. King, you may step down.

The Witness: Thank you, your Honor.
The Court: Call your next witness.
Mr. Alexander: Mr. Redding.

CARL REDDING, called as a witness by the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: Will you state your name, please?
The Witness: Carl Redding.

Direct examination.

By Mr. Alexander.

Q. Will you state your name, please, sir?
A. Carl Redding.
Q. And your residence?
A. 1206 Beardsley Street, San Diego.

Mr. Alexander: Speak up, Mr. Redding, so we can hear you.
[fol. 1284] The Witness: 1206 Beardsley Street, San Diego.
Q. What is your occupation, or employment, Mr. Redding?
A. I run the Redding Supply Co.
Q. How long have you run this company?
A. Almost two years.
Q. Sometime in 1949?
A. Yes, in 1949.
Q. Have you ever been associated with the Richfield Oil Corporation?
A. I was their TBA distributor. I was a part of their TBA distributor.
Q. When did this activity take place, Mr. Redding, when did you become their TBA distributor?
A. I think it was in February or March in 1946.
Q. Calling your attention, Mr. Redding, to about that time, can you recall the conversations that you had with any Richfield representatives in connection with your becoming the TBA representative.
A. Well, there was a considerable amount of conversation made when we became the distributors.

Q. I am speaking about the preliminary negotiations for you to become that person.

A. Well, that was started with a gentleman by the name of Stan Green.

Q When was this and where?

[fol. 1285] A. That happened in a service station.

Q. In San Diego?

A. In San Diego, 12th and Market.

Q. We will tie this down to the date. This was in 1946?

A. I think that was about—I think it was just before '46.

Q. December '45?

A. Yes, along in December.

Q. All right. Now, will you relate to the court what this conversation was that you had with Mr. Stan Green?

Mr. DeMartini: Objected to as no proper foundation laid, your Honor. There is no testimony as to who Stan Green is.

The Court: Overruled. Go ahead.

By Mr. Alexander:

Q. Mr. Redding, do you know who Mr. Stanley Green is?

A. Mr. Stan Green was the San Diego—I don't know whether they call them agents or manager or what they do call them, in the Richfield Oil Co. He had charge of the bulk plant at San Diego.

Mr. Paradise: Pardon me, Mr. Dixon. Is he looking for the stipulation?

Mr. Dixon: I don't know. I think he is.

(Counsel conferring.)

[fol. 1286] By Mr. Alexander:

Q. Now, Mr. Redding, will you continue to relate what conversation you had with Mr. Stanley Green?

A. Well, I knew Mr. Stan Green quite well, and at the time he was looking——

Q. Let us confine it to what was said—excuse me.

A. That is what I am getting at, that subject was what he was talking about. He asked me if I would be interested in taking a TBA distributorship. You are asking me to give the conversation we had, aren't you?

Q. Just the substance of it.

A. All right. So I told him that I was interested in becoming a TBA distributor. How much money would it take? He told me the amount of money. And I gave him a number of references, and at that time he said that he would take it up with the Los Angeles office and he would let us know—he would let me know. So that went on for a couple of months. And he called me one morning and told me that there would be a couple of gentlemen down from L. A. to talk to me, which included the credit manager and a couple of other employees.

Q. Do you recall their names?

A. Well, one. One of them was Hugh Tietjen and the other was Mr. Cecil Burgner.

Q. Hugh Tietjen and Mr. Cecil Burgner?

A. Yes. And the credit manager was Mr. McLaughlin.

[fol. 1287] Q. McLaughlin?

A. McLaughlin. So we met in a hotel and discussed the thing for over——

Q. Excuse me, Mr. Redding. "We met in a hotel"—do you mean these gentlemen did come down?

A. Yes, they came down. But in the meantime I decided to take a partner in with me, which is now Darwin Dapper (?). We talked the thing all over and we decided to take a TBA distributorship. So they made us a TBA distributor. That is how we come about it.

Q. Can you recall about the time that this meeting you had with Mr. Tietjen and Mr. Burgner took place?

A. That was, I think, maybe in March, maybe April, March, or maybe the last of February.

Q. 1946?

A. Yes, '46.

Q. Will you relate to the court, Mr. Redding, what the substance of the conversation was that you had with these two gentlemen in March of 1946?

A. Well, one of the things we met for was to take an order. They were going to set us up in an order of how much merchandise we could handle, how much money we had to handle it with, how much they were going to loan us to handle it with. And the outcome of that deal was that we were to keep our money and use their money. It was a sum [fol. 1288] of about—oh, I think in the neighborhood of

eight or nine thousand dollars. We were to pay that back out of the profits that we made.

Q. Was there any discussion as to the products you should handle?

A. Well, they sat down and they had their catalogs. We went through the catalogs and they specified what we were to handle, how much we were to handle, and at that particular time there was quite a shortage in certain merchandise, and they specified as to the quantity, to the type of merchandise, and the name brand that was approved.

[fol. 1289] Q. Will you relate to the court the type of merchandise in detail, whether tires, batteries, or what?

A. Well, the only type of tires or batteries was Goodyear tires and Goodyear batteries, and Champion spark plugs.

Mr. DeMartini: I object to that as calling for a conclusion.

The Court: You are giving the conversation?

The Witness: Well, if I get it right, he was asking me what kind of merchandise we were to handle, and that is what I was telling you.

The Court: Well, who told you that, that was it.

The Witness: Who told us? Well, it was——

By Mr. Alexander:

Q. Relate your conversation with Mr. Burgner and Mr. Tietjen at the time you were designated the Richfield TBA representative.

A. Well, they were writing this order down.

The Court: Oh, I see.

Mr. Alexander: That clarifies it.

The Court: They were the ones who designated it. Are you talking about batteries now, and tires?

The Witness: Batteries and tires.

The Court: Who designated the tires and the batteries?

The Witness: Cecil Burgner.

The Court: That is all right. Overruled. Go ahead. You [fol. 1290] may continue your answer.

The Witness: Oh, they had a list of approved things, like Champion spark plugs was the only one, and certain types of patches, and when that first order was taken they used their own judgment about it, as to what we should handle, and what we shouldn't handle.

By Mr. Alexander:

Q. This was making up your original inventory?

A. That's right.

Q. Mr. Redding, was there any discussion as to the area in which you should operate?

A. Yes.

Q. Will you relate to the court what was said?

A. We would operate in San Diego County. Oh, we had to buy out Mr. Hartning at Chula Vista, because we was supposed to have that territory also. He was a commission agent handling TBA, so we bought out his stock at the same time. So we took in Chula Vista, National City, the Mexican border, and the beaches to La Jolla. They wanted us to take on Escondido, but we didn't have the equipment, and couldn't buy the trucks at that time to do it.

Q. Mr. Redding, was the number of outlets you were to service indicated to you at this time?

A. Well, we knew without being told because we had handled those when we were at Les Harrington's.

[fol. 1291] Mr. DeMartini: I move to strike the answer, your Honor, as not responsive, and calling for a conclusion, and not a conversation.

The Court: We will strike the answer.

By Mr. Alexander:

Q. Mr. Redding, during the conversation you had with Mr. Tietjen and Mr. Burgner, did they tell you where these products that you were purchasing from them should be distributed and sold?

A. Well, that was the idea when we took it over, was to be a Richfield distributor.

Q. I am asking you for the outlets.

A. No, they didn't specify any separate places to be sold.

Q. The area, as I understand it, that you described was San Diego and Chula Vista?

A. That is right, and the beach area.

Q. Now, the stations that were to be serviced were in that area?

A. That's right.

Q. Were you aware of the number of stations?

A. Yes, there was 28 stations at that time.

Q. Were these referred to in the conversation with Mr. Burgner as the stations you should service as TBA distributor?

Mr. DeMartini: I object as contrary to the statement of [fol. 1292] the witness.

The Court: It is a leading question. I will sustain the objection. He wants you to tell us what was said, if anything was said. I understood at first there was no discussion as to the customers.

The Witness: No, they didn't tell us exactly. They told us the number of accounts. We were already aware of the fact which ones they were, because we took the TBA distributorship over from Harrington, they canceled him out, and gave it to us, so we knew exactly what the accounts were.

The Court: Well, what were they? I mean, what dealers were they? Richfield dealers?

The Witness: Richfield dealers.

The Court: They were Richfield dealers?

The Witness: Richfield dealers.

The Court: And that showed on the records, on the books you examined?

The Witness: That's right. We had a complete list.

The Court: You got a complete list. Let's go on from there.

By Mr. Alexander:

Q. Mr. Redding, in your capacity as a Richfield TBA distributor, were you instructed by Mr. Burgner and Mr. Tietjen in this original conversation as to the type of merchandise that you should handle?

[fol. 1293] A. Yes.

Q. Were you told that the merchandise must be only that which was designated as a sponsored product?

Mr. DeMartini: I object, as calling for a conclusion.

The Court: That is leading. The objection is sustained. He has already mentioned about sponsored products. Tell us what was said about sponsored products.

The Witness: You want me to answer that question "Yes" or "No," or do you want me to talk about it?

Mr. Alexander: The court asked you to tell about sponsored products.

The Court: I am asking you what was said about sponsored products.

The Witness: We were to handle only merchandise that Richfield allowed us to buy.

The Court: And they designated the products?

The Witness: Right.

The Court: Did they mention any other products?

The Witness: There wasn't any other products that we could purchase because we purchased it through them.

The Court: Through them. I see.

The Witness: So we couldn't buy anything that wasn't approved at that time.

The Court: Go ahead.

By Mr. Alexander:

Q. Mr. Redding, you state you purchased your merchan-[fol. 1294] dise from the Richfield Oil Corporation?

A. That's right.

Q. Will you state to the court the manner in which that was done?

A. That's a long procedure there.

Q. Just briefly.

The Court: Make it as brief as you can.

The Witness: We had a regular form which we ordered on. At this particular time there was no man called on us to take this order, so we would write up what we needed, and we would send it in to Richfield, and it went probably to the credit department and on down the line, and then returned, filled out a purchase order, and sent it to the company we were ordering from, and we would receive that merchandise billed to us—no, billed to the Richfield Oil Company in care of Service Station Supply Company.

By Mr. Alexander:

Q. To whom did you pay the money for the merchandise?

A. Well, on most of the occasions, with the exception of a few, we wrote out our check to cover our entire purchases.

Q. To whom was that made payable?

A. To the Richfield Oil Company.

Q. In other words, the Richfield Oil Company was your [fol. 1295] source of supply?

A. That's right, but on several—a few items it wasn't that way, that we were allowed to order direct. Now, I think all of those direct deals was Goodyear tires and batteries, but all car-home auto supplies, which contains about 3,000 items here, were purchased right through the Richfield Oil Company.

The Court: Did they leave a catalogue with you under which you could replenish your stock in case you were low, or what?

The Witness: Well, we ran a perpetual inventory there at all times.

The Court: You did?

The Witness: We were required to.

The Court: I see.

By Mr. Alexander:

Q. Mr. Redding, how did you replenish your inventory of the products you sold?

A. We replenished them with purchase orders.

Q. In the manner you just described?

A. Just described.

Q. Did you receive any instructions from Mr. Burgner at the time of this conversation when you were established as a representative, as to where you should sell these products?

A. Well, there was no specific thing, or conversation [fol. 1296] that we had to sell to one particular station, because we were encouraged to get all the other business we could possibly get to make the thing pay, because this was something new in San Diego. It had been established before, but had never been a success, and we had to maintain an average of over $5,000 a month to stay in business. In other words, we wouldn't break even if we only sold $5,000 worth of merchandise a month, so until they educated the dealers that we were going to give them the right kind of service on all their business, to handle all of the Richfield stations, which at that time they were buying any place they wanted to buy. And they wanted us to pick up all the added business we could possibly pick up to make the thing pay until they could put merchandisers in the field to help us out.

Q. But you directly and personally solicited the Richfield Oil Corporation's stations?

A. That's right. Then at a later date they put a lot of merchandisers in the field that helped us get the business.

Q. Mr. Redding, I show you here Government's Exhibit No. 7 in evidence, and ask you to examine that, please.

A. Yes.

Q. Will you state to the court whether or not you have ever seen that form before?

[fol. 1297] A. Yes, I have. I have made it out a lot of times. I have filled it out a lot of times.

Q. Briefly, then, what use have you made of that form?

A. Well, this is a form that we just talked about this afternoon. This is a form here that we—there is another form that goes with this, isn't there, to make it complete,—a little card, a little manila square card, about 8 by 9? Well, anyway, I don't need it. We would recap off of that card. You should have it to make this complete, but I can tell you about it.

Q. If you will, please, because that is the only form that we have.

A. Well, let's see, sir. Talking about this one form, then,—we are limited to that? I have to tell you about the other one to tell you about this one.

Q. Let's talk about that one.

A. It is a recap of another form, that's all it is. It is a recap that goes in to the Richfield Oil Company, telling them——

Q. Will you explain to the court what you do in executing this form?

A. Well, we write out—wait a minute. This is a different deal here, isn't it? "Richfield TBA distributors monthly report." This form is a form telling the Richfield Company as to what we did for that particular month.

[fol. 1298] The Court: It is a sort of monthly report?

The Witness: That's what it is. The terms, the stations,—it gives a report, a recap of all we did at Richfield stations only.

By Mr. Alexander:

Q. Mr. Redding, do you recall having had a conversation with any Richfield representative in connection with this form?

A. Well, the only conversation we had was if we didn't get it in, we heard a little bit about it.

Q. I mean, when was the form first used by you, and what were the instructions?

A. Well, the instructions were to fill this out monthly.

Q. And what disposition was to be made of it?

A. To send it in to the Los Angeles office.

Q. Did you maintain a copy of this form that was executed by you?

A. Yes.

Q. What disposition was made of that copy?

A. Well, it was filed, and it was used by the merchandisers. They would pick this out from time to time when they would come around, and look it over, and it was just held as a more or less record. But with this form here, we sent in a fourth copy of our sales also, with this form.

[fol. 1299] Q. Did you ever have any conversation with a Richfield representative in connection with an executed form of this nature?

A. Well, they would——

Mr. Paradise: Will you speak a little louder, please, Mr. Redding?

The Witness: Yes, sir. Well, they would use this—mainly, what this was——

By Mr. Alexander:

Q. Mr. Redding, I am asking you, did you have any conversations with a Richfield representative on a form wherein you had indicated the sales that you had made to Richfield dealers or L-O operators.

A. Well, yes. That was a conversation held about every week. We had lots of them.

Q. Can you relate a conversation that you had? Let's tie it down now to a particular person.

A. Well,——

Q. Let me see if I can help you, Mr. Redding. Who in the Richfield office in San Diego was the person with whom you dealt in connection with TBA reports?

A. Well, we dealt with—the first one was Stan Green.

Q. Now, did you have any conversation with Mr. Green in connection with this 1079 or Government's Exhibit No. 7?

A. Well, the conversation we had was that it was to be [fol. 1300] filled out and kept up to date, and they would refer to it to check stations to see what they were selling, how much they were selling, so that they could prod them a little bit to get more business. That's what this was used for.

Mr. DeMartini: I object to that as a conclusion of the witness.

The Court: Overruled. Go ahead. You are telling us what he told you?

The Witness: That's right, trying to, as well as I can.

By Mr. Alexander:

Q. Mr. Redding, in your capacity as a Richfield TBA representative, did you stock any merchandise other than the sponsored products recommended by Richfield?

A. Yes.

Q. Was any of this merchandise sold to any Richfield dealer, that is, any service station handling Richfield petroleum products?

Mr. DeMartini: I will object to that, your Honor, on the ground he cannot testify as to selling to any Richfield station unless the contract is first introduced in evidence as to the Richfield station to whom he sold, as the uncontracted stations do not apply to this case.

The Court: He knows to whom he sold. Go ahead.

By Mr. Alexander:

Q. Mr. Redding, did you sell any of the TBA——

[fol. 1301] The Court: It shows the manner of operation. Go ahead.

By Mr. Alexander:

Q. Do you understand the question?

A. You asked me if we sold any of the unauthorized merchandise to Richfield stations.

Q. Possibly we will want to identify them as Richfield stations with the identification of the colors of the Richfield Oil Corporation?

A. Yes, we sold it to them.

Q. In connection with the conversation you had with Mr. Burgner when you were established, were you told you were to sell only the sponsored products to these stations we have just referred to?

Mr. Paradise: That is objected to as leading and suggestive. I think he should ask for the conversation.

The Court: Yes, I think on the primary facts, until a pattern has been laid. When it becomes repetitious, we may short-cut it, but now we are laying the groundwork, so I don't think we ought to do that.

Mr. Alexander: The difficulty I am having, your Honor, is that in the conversation Mr. Redding had with Mr. Burgner and Mr. Tietjen, they went over all of this material.

The Court: That is all right. That may be true.

Mr. Alexander: It is just that I want Mr. Redding to explain that to us.

[fol. 1302] The Court: In other words, what, if anything, was said about selling other products? You can answer that question.

The Witness: Well, we wasn't supposed to sell any other products.

The Court: That does not answer it.

By Mr. Alexander:

Q. Was that related to you by Mr. Burgner or Mr. Tietjen?

A. That was related to us by a number of Richfield employees.

Q. Can you identify any of these for us?

A. Well, we were told by Mr. Burgner, by Mr. Wilhoit, and we were told by Mr. Tietjen, which is now a TBA distributor. We were told by a Mr. Hasler.

Q. Who is Mr. Hasler?

A. Well, at that time I think he was an assistant to Miller.

Q. To Mr. Miller?

A. Yes.

The Court. All right. Go ahead.

By Mr. Alexander:

Q. Mr. Redding, are you presently a TBA representative of the Richfield Oil Corporation?

A. No.

Q. When did you cease being a representative?

A. I think I was ceased by the Richfield Oil Company.

Q. I am asking you for that date, Mr. Redding.

[fol. 1303] A. No, I have no connection with the Richfield Oil Company.

Q. When did you terminate your representation?

A. In October, 1947, I think it was, or 1948. '48, I guess it was—'48, '49, '50—yes, '48, October.

Mr. Alexander: No further questions.

The Court: Cross-examine.

Mr. Alexander: May I ask just one more question, your Honor.

The Court: Yes.

By Mr. Alexander:

Q. Your last remark was that you were terminated by the Richfield Oil Company as a TBA representative?

A. I wasn't actually terminated. Do you want to know why I was terminated—I mean, why I am not with them?

Q. I want to clarify that in the mind of the court,—because the way it is it states you were terminated. I want to know what the facts were.

A. Well, the fact was that they could do a better merchandising job without me than with me, because I wouldn't be dictated to. That's the whole size of it, because I was in Germany once, and I didn't want any more of it. That is the actual fact.

Mr. DeMartini: I ask that that be stricken, your Honor, as a conclusion of the witness.

[fol. 1304] The Court: Overruled.

The Witness: That is exactly the reason.

The Court: All right. Any questions?

Mr. DeMartini: No questions.

The Court: Step down. You may be excused.

(Witness excused.)

The Court: Call your next witness. These witnesses, after they have completed their testimony, may be excused. Unless you retain them it will be considered that they are excused. Call your next witness.

Mr. Alexander: Mr. Nicholson.

S. L. NICHOLSON, called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination:

The Clerk: Will you state your name, please?

The Witness: S. L. Nicholson, N-i-c-h-o-l-s-o-n.

By Mr. Alexander:

Q. Will you state your name, please?

A. S. L. Nicholson.

Q. And your residence?

A. Phoenix, Arizona.

Q. What is your present occupation, Mr. Nicholson?

[fol. 1305] A. I beg pardon?

Q. What is your occupation?

A. I am in the oil business.

Q. Well, what do you mean by "the oil business"?

A. A wholesale jobber for Phillips Petroleum Company.

Q. With the Phillips Petroleum Company?

A. Yes.

Q. Have you ever been associated with the defendant in this case, the Richfield Oil Corporation?

A. Yes, sir.

Q. When?

A. I worked for them from 1937 until '46.

Q. Where were you employed, and in what capacity?

A. As an assistant manager, in charge of Arizona.

Q. Assistant manager in the State of Arizona?

A. In the State of Arizona, yes.

Q. Would that cover the period 1937 to '46?

A. No, I was later put in the northwest, in Seattle, for a while. I was in Arizona from '41 to '46.

Q. 1941 to '46?

A. Yes, sir.

Q. You were assistant division manager for the State of Arizona?

A. That's right.

Q. For the Richfield Oil Corporation?

[fol. 1306] A. Yes, sir.

Q. Who was your superior in that capacity, Mr. Nicholson?

A. Mr. King.

Q. Mr. King?

A. Yes.

Q. Now, calling your attention to the time when you became the assistant division manager, as I understand, it was in 1941?

A. Yes, sir.

Q. —in the State of Arizona. Do you recall having had any conversations or discussions with Mr. King in connection with your duties as assistant division manager?

A. Well, you mean about my duties?

Q. That is correct, sir, as assistant division manager of the State of Arizona?

A. Well, no, I don't. No, I can't recall that I did.

Q. You say you can or cannot?

A. No, I can't.

Q. Will you state briefly what was the nature of the duties of your office of assistant division manager?

A. I handled all the sales, was directly in charge of sales for the State of Arizona.

Q. Would it be a fair statement to say you were in charge of the marketing policy of the Richfield Oil Corporation——

[fol. 1307] A. No, not the policy. I just had charge of selling merchandise.

Q. Selling Richfield's merchandise?

A. That's right.

Q. And the duties that you carried out in that capacity were under the general supervision of Mr. King?

A. Yes, sir.

Q. Now, calling your attention again, Mr. Nicholson, to this time when you were appointed in this capacity, did

you have any conversation with Mr. King about the execution of these duties?

A. Well, nothing, only talked our problems over, about what we had to do, and what we wanted to do.

Q. Well, there was considerable conversation about what you would do in this new position to which you were going in Arizona?

A. Yes, we had certain things to do.

Q. Will you explain what was the nature of the conversation as to carrying out your duties in furtherance of the marketing policy of Richfield?

A. Well, we had some spots where we had no business, and we had to lay plans to add to that.

Q. Mr. Nicholson, did Mr. King explain to you what was the policy of the Richfield Oil Corporation that was to be employed by you——

[fol. 1308] A. No.

Q. —as assistant division manager?

A. No.

Q. Will you describe, briefly, to the court, Mr. Nicholson, what was the function of the office of the assistant division manager in the State of Arizona, which you occupied?

A. I had charge of all selling work, in charge of salesmen and operations.

Q. What was the type of customers to whom the products were sold?

A. To service stations and farms and ranches, and commercial accounts.

Q. In your capacity as the assistant division manager, were you familiar with the contractual relationship that existed between the Richfield Oil Corporation and this class of purchasers you referred to——

A. Yes, sir.

Q. —as service station operators?

A. Yes.

[fol. 1309] Q. Mr. Nicholson, I show you here Government's Exhibits 1, 1-A through -E, now in evidence, and Government's Exhibits 5-A, -B, and -C in evidence, and ask you to examine these forms, please, sir. Are these the type of contracts that were entered into between service station operators in the State of Arizona and the Richfield Oil Corporation?

A. Yes.

Q. During the time that you were the assistant division manager?

A. Well, some of the forms, I believe, were of a new type. I don't know. I can't read when they were printed, but I didn't handle any of them after 1946.

Q. No. Did you personally——

A. Sir?

Q. Did you personally handle the execution or negotiations for the execution of any of these instruments?

A. We handled negotiations, yes, and sent them in for approval.

Q. No, you misunderstood me. Did you personally? Did you personally?

A. No. Generally the salesmen handled them, the salesmen or a merchandiser or somebody would handle the execution of them, get them signed and send them to my office.

Q. Excuse me, Mr. Nicholson. I am asking the question did you personally handle the execution or the negotiations [fol. 1310] for the execution?

A. No. No, I didn't.

Q. Was the negotiation for the execution handled under your supervision?

A. Yes.

Q. By whom would that be handled in your office?

A. Well, we had some clerks that handled it, just handled the papers.

Q. I mean the negotiations for the execution in the execution of these documents.

A. No, I didn't execute them.

Q. I know, Mr. Nicholson. I think you misunderstood me. I am asking you to designate your subordinates who did handle the negotiations.

A. The salesman, the salesman and/or the merchandiser.

The Court: And they acted under your supervision?

The Witness: That is right.

The Court: Before we go on, you said you have nothing to indicate the year. I call your attention to the fact that there is a printed legend which gives the year.

The Witness: Yes.

The Court: If you look at this it may refresh your recol-

lection as to whether you handled those during the time you held that office. Every one of them has one.

The Witness: I can't see them.

[fol. 1311] The Court: You can't see that one there, right there?

The Witness: No, I can't see it.

The Court: Maybe you need glasses. Here, will this (magnifying glass) help you.

The Witness: It is fine print. Yes.

The Court: Will this help you?

The Witness: That looks like—no, I don't believe I handled any of this form.

Mr. Alexander: This is the 542.

The Witness: Yes, I have handled 542.

The Court: All right.

By Mr. Alexander:

Q. Mr. Nicholson, will you describe briefly to the court the nature of the duties of the subordinates you refer to as salesmen and merchandisers?

A. Yes. They would go out to solicit business and try to get new operators and get new petroleum accounts.

Q. In this activity of soliciting new business and getting new operators, as you describe, did these gentlemen operate under your supervision?

A. Yes.

Q. Will you state to the court briefly what was the nature of the instructions that you gave these merchandisers or salesmen?

A. Well, of course, acting in the capacity of a sales-manager, why, we tried to get all the business we could and improve our situation.

[fol. 1312] Q. No, Mr. Nicholson. I am referring now to duties in connection with soliciting new business and executing these agreements which are before you, and duties of that nature.

A. Well, I would tell them to go out and get it signed and bring it in to the office, and we would put the papers through in the regular channels.

Q. What did you tell them? What did you give them in the way of instructions as to how to conduct their negotiations?

A. Well, I didn't give them anything——

Q. Just state in your own words.

A. I can't get what you are driving at.

Q. Well, as I understood you to say, Mr. Nicholson, you stated these subordinates——

A. Yes.

Q. —were instructed to solicit new service station locations. Now, can you recall the nature of the instructions that you gave these individuals when they did conduct this activity?

A. Well, I would generally go along and see the location myself, sometimes, and if I saw it was a good deal, go ahead and sign him up. Everything is all right.

Q. Were you ever present any time when one of these deals was negotiated?

A. Yes, I have been.

Q. Can you relate to the court in substance what was [fol. 1313] the nature of the conversation in the form of negotiations?

A. Well, no. It has been so long I wouldn't recall. Each one of them was a separate deal.

Q. Tell us in substance, Mr. Nicholson. I am not asking you to recall every incident, but an incident. Do you recall the nature of the conversation at the time you were installing an operator in a station under either one of these two types of form before you?

A. No, I can't recall the nature of the conversation.

The Court: What was the nature of the instructions, the instructions you were discussing with them about their duties as to the products they were to handle, the accessories or things like that, in a general way? Was there a pattern?

The Witness: Yes, there was a pattern.

The Court: Of instructions?

The Witness: I didn't handle service station operation, like checking a dealer. I had other people do that for me and they would go out and check them in, the merchandisers would or salesmen. I have handled very little of that myself.

By Mr. Alexander:

Q. But you did instruct these subordinates to carry out these instructions?

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The Court: Of instructions?

The Witness: I didn't handle service station operation, like checking a dealer. I had other people do that for me and they would go out and check them in, the merchandisers would or salesmen. I have handled very little of that myself.

By Mr. Alexander:

Q. But you did instruct these subordinates to carry out these instructions?

A. Yes.

Q. Now, do you recall what was the nature of the instructions that you delegated to them?

Mr. DeMartini: I think the questions should be more [fol. 1314] specific.

The Court: The witness himself is so hazy in his recollection that counsel is trying to direct his attention to some conversation as to which his recollection is distinct.

Mr. DeMartini: The witness, you see, has been out of this activity since 1946.

The Court: Yes, I know. We are not criticizing the witness. I am just trying to see if I can help him to remember something. What he wants to know is what did you tell them to tell the prospects.

The Witness: Oh, I see.

The Court: That is what he wants to know.

The Witness: Oh, I would tell them—sometimes I would personally call the man. He might come into the office and I might make a deal with him. I would tell him he was expected to handle our merchandise or oil or gasoline and TBA. Whatever we have to sell he was supposed to handle.

The Court: That would mean what? Whatever you have to sell meant what? What were you referring to?

The Witness: Gasoline or oil.

The Court: I mean what products?

The Witness: The Richfield.

The Court: Richfield products. That is fine. Go ahead.

By Mr. Alexander:

Q. Continue, Mr. Nicholson. That is exactly what I want you to express to the court.

[fol. 1315] The Court: All right, go ahead.

By Mr. Alexander:

Q. You have just referred to an incident where you said you handled it.

A. Yes.

Q. Let us take an incident where the subordinates had to carry out the same duties.

A. Well, I would tell them to install the man as the operator, to handle the paper work, see that the stations were

clean and neat, and properly stocked, and to handle the thing in the usual manner.

Q. Did you tell him what products that he should tell the potential operator he should purchase?

A. Sometimes we did and sometimes we didn't. It was generally assumed when you put a man in one of your stations that he is going to handle your merchandise.

Q. Mr. Nicholson, in your capacity as assistant division agent and as the immediate subordinate of Mr. King was it not your responsibility to carry out the marketing policy of Richfield Oil Corporation?

A. Yes.

Q. In that regard we are attempting to get down to this outlet who is the actual person who sells the products. That is the reason I am asking you if you can't recall what was the nature of the practice.

A. Well, it would be hard to really describe it unless you [fol. 1316] actually done the work yourself.

The Court: You have given us a general idea of what you did in those cases in which you closed the deal. Were your instructions to the men who represented you along the same line, that is, conduct a clean station?

The Witness: Yes, sir.

The Court: And to handle your products?

The Witness: That is right.

The Court: Other than that? You have already told us that. Other than that do you remember anything more specific?

The Witness: No, I can't recall anything more specific than that.

By Mr. Alexander:

Q. You referred a moment ago in your testimony, Mr. Nicholson, to automotive accessories. Did the Richfield Oil Corporation sell automotive accessories to service station operators under contract in these forms Government's 1 to 1-E and 5 through 5-D?

A. Well, at that time when I was in Arizona, of course, during the war years we had practically nothing to sell, so our TBA was a very minor item. In fact we paid very little attention to it at that time.

Q. Mr. Nicholson, I asked you the question: Were there sales made, not the availability. Was there a sales program of TBA products?

A. Yes.

Q. Will you explain to the court the program?

[fol. 1317] A. We had a program with Goodyear, Goodyear-approved items. I had a catalog and would order from the catalog.

Q. Let us relate it a little bit more to these service station operators identified in these contracts.

Mr. Paradise: Which station service operators?

Mr. Alexander: Service station operators operating in the State of Arizona during the time Mr. Nicholson was the assistant division manager.

Mr. Paradise: The question, if the court please, relates to which type of service station operator he was referring to.

The Witness: Whether you are an independent operator or a L-O operator is what you want to know?

The Court: Yes.

Mr. Alexander: That is what Mr. Paradise refers to.

The Court: If there was any difference in the manner.

The Witness: Yes, there is a difference between the independent operator and leased out station.

The Court: In regard to what? In regard to the accessories, the TBA?

The Witness: No, not necessarily accessories, no.

The Court: Well, with regard to accessories, to TBA, what was your policy?

The Witness: Of course, we encourage our L-O operators to handle all of our approved accessories. The independent operators could generally do as they pleased. Some of them [fol. 1318] bought from us and some of them didn't.

By Mr. Alexander:

Q. Were they encouraged to do so?

A. Yes, we naturally encouraged them to do so.

Q. Was there a Richfield TBA representative in the City of Phoenix where you were?

A. No, sir. He was established later.

Q. Mr. Nicholson, in your capacity as assistant division

manager do you recall any sales of petroleum products being made by the Richfield Oil Corporation to retail service stations that were at the same time handling petroleum products of other companies?

A. Well, we sold oil to some stations who handled competitive products.

Q. Any gasoline?

A. No. Generally our gasoline was a hundred per cent account.

Q. Was this a policy of the Richfield Oil Corporation on the gasoline to be sold at Richfield stations?

A. I think it was, yes.

Q. How was that matter brought to your attention, Mr. Nicholson?

A. Are you referring now to the split pumps?

Q. To this matter of the split pump.

The Witness: Split pump accounts?

The Court: Yes, the split pump.

A. I think it was told to me.

[fol. 1319] Q. By whom?

A. By, I think, Mr. Dinkins at that time.

Q. You see, it was conversation or instructions of that nature that I referred to when I asked you if you had any discussion with Mr. King as to the execution of the sales policy.

A. Yes, I think maybe, perhaps Mr. King and I may have discussed about our policy of not having split pump accounts. And, as he said this morning, our experience has always been that the other accounts are easier to handle and worth more to a company than a split pump account.

The Court: Was that a recognized policy as far as you remember?

The Witness: Yes.

The Court: During the entire period you were there?

The Witness: Yes.

The Court: When you were in charge of the Arizona district?

The Witness: That is right.

The Court: Was your stay in Seattle after you quit?

The Witness: No, before.

The Court: It was before?

The Witness: Before, yes.

The Court: You were promoted to Arizona?
The Witness: Yes, promoted to Arizona.
[fol. 1320] The Court: That is all right. Arizona is nice certain times of the year. Go ahead.

By Mr. Alexander:

Q. Mr. Nicholson, were all of the operations as pertaining to marketing of petroleum products for the whole State of Arizona during the period of 1941 to 1945 under your supervision?
A. Yes, sir.

Mr. Alexander: I have no further questions.
The Court: Any cross examination?
Mr. DeMartini: Yes, sir.

Cross-examination.

By Mr. DeMartini:

Q. You have referred to instructions with respect to split pump policy, Mr. Nicholson. When were those instructions given to you and by whom?
A. As I recall it, I think Mr. Dinkins gave them to me about in 1937 or '38. About '38, I think, while I was still in Seattle.
Q. Did you ever have solicitation from an account for the purchase of gasoline for less than the entire number of pumps in that station?
A. Yes.
Q. Did the occasion ever occur?
A. Yes.
Q. When did that occur?
[fol. 1321] A. Well, I would say along about in '40 and '41.
Q. 1941. And at that time you refused to, or did you take on the account?
A. We did take on the account, yes, and later converted to a hundred per cent account.
Q. When did that take place?
A. Well, either in 1940 or 1941, in Phoenix. In fact, we had two of them at that time. We later converted them to a hundred per cent account.

Q. That was at the time that you received the instruction that you speak of by Mr. King?

A. I think possibly, yes.

Q. Has it ever happened since that date?

A. Not as I know of.

Q. In response to a question from Mr. Alexander you stated that at the time of the installation of an operator in a station the operator was instructed as to the manner of operating the station, is that correct?

A. Well, we generally discussed it with him, yes, how we——

Q. Were you speaking of L-O stations?

A. L-O stations, yes.

Q. And you were not speaking of the independent stations?

A. That is right. L-O stations only.

Mr. DeMartini: I think that is all.

[fol. 1322] The Court: All right. Any redirect?

Redirect examination.

By Mr. Alexander:

Q. Mr. Nicholson, these two instances you speak of in 1940 or 1941 in this category of split pump, what was the nature of those at the time you entered into this transaction?

A. They were handling competitive brands of gasoline.

Q. Were they service stations?

A. Yes.

Q. What was the nature of the negotiations that were conducted by your subordinates or you with the service station operators that entered into the contracts or relationships under the 337 type of agreement before you?

A. What was our relationship?

Q. What was the nature of the negotiations?

A. Well, we generally went out and executed the sales contract and paint contracts, and later put up our signs and painted the station and made an independent account of it.

Q. Let us be a little more preliminary. That is what happened. Let us start at the beginning. When you were

conducting the negotiations what was said concerning the sale of petroleum products?

Mr. DeMartini: I will object to this as no proper foundation laid, without referring to the specific instances.

The Court: Overruled.

[fol. 1323] Mr. Alexander: However, we are attempting to establish this existing policy. The witness has difficulty on this——

The Court: All right, go ahead.

The Witness: Where were we, again? What was the question, please?

The Court: Read the question.

(Question read by the reporter.)

A. Well, in discussing the sale of petroleum products we told a man we had good gasoline, good oil, and good accessories, and discussed the merits of the products and the quality, etc.

The Court: What products are you talking about?

The Witness: Richfield.

The Court: That is right. That is what you wanted him to handle?

The Witness: That is right.

By Mr. Alexander:

Q. Was there any discussion about the handling or not handling competitive products to Richfield?

A. No. Naturally, we would encourage him to handle everything, but we didn't really make an issue out of it at that time.

Mr. Alexander: Just one more question, your Honor.

Q. Referring to these two stations in 1940 or 1941 that were converted, were these stations converted to what you called in your testimony 100 per cent, pursuant to instructions?

[fol. 1324] A. Yes.

Q. Of the Richfield Oil Company?

A. Yes.

The Court: They had handled somebody else's products?

The Witness: That is right.

The Court: And you changed them into Richfield products?

The Witness: Richfield stations, that is right.

The Court: And Richfield signs?

The Witness: That is right.

The Court: When you did that did you keep the pumps that were there or did you install new pumps?

The Witness: I think at that time they installed new pumps in those stations.

The Court: Anything further, gentlemen?

Mr. Alexander: That is all.

The Court: All right, you may be excused. Gentlemen, it is 5:00 o'clock, unless you have a very brief witness that you want to get out.

Mr. Alexander: I think we do, your Honor. We have one brief witness from Prescott, Arizona.

The Court: All right.

A. J. Cowan, called as a witness by the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: Will you state your name, please?

[fol. 1325] The Witness: A. J. Cowan.

Direct examination.

By Mr. Alexander:

Q. Would you state your full name, sir?

A. A. J. Cowan.

Q. Where do you live?

A. Prescott, Arizona.

Q. Have you ever been employed by or associated with Richfield Oil Corporation?

A. Yes, sir.

Q. When and where?

A. In Prescott, Arizona, from 1941 through most of 1948.

Mr. Alexander: Speak up, Mr. Cowan. Counsel cannot hear.

The Court: Speak loud enough that counsel can hear you.

The Witness: All right.

By Mr. Alexander:

Q. In what capacity were you employed, Mr. Cowan?

A. As district salesman from 1941 through most or half of 1945.

Q. District salesman?

A. Yes, sir.

Q. Who was your superior while you were serving in that capacity?

A. Mr. Nicholson for the greater part of the time.

Q. The gentleman who just testified here?

A. Yes, sir.

[fol. 1326] Q. Will you describe to the court briefly, Mr. Cowan, what was the nature of your duties as district salesman?

A. Well, my duties involved the solicitation, the general solicitation for the sale of products which Richfield had for sale, and to look after and aid in the matter of keeping their marketing facilities in the proper state of repair and cleanliness.

Q. About how many accounts were you servicing in this manner you describe?

A. Are you speaking of retail accounts?

Q. Well, whatever accounts. What type of accounts did you have?

A. Well, we had various and sundry types of accounts, retail and consumer type. Are you speaking just strictly of retail accounts when you asked me how many?

Q. Where the purchaser resells it.

A. Approximately——

The Court: You mean by "retail" station outlets?

The Witness: Reselling, yes, sir. Reselling outlets.

The Court: Consumer account you mean you would sell to farmers and others?

The Witness: That is right.

The Court: Ranchers, as they call them in Arizona, direct?

[fol. 1327] The Witness: Yes, sir.

The Court: Those persons who buy large quantities?

The Witness: Yes, sir. They are consumer types.

The Court: They are consumer types.

By Mr. Alexander:

Q. How many outlets were there of the type you describe as retail outlets?

A. Approximately 20.

Q. What was your area of operation, Mr. Cowan?

A. About one-third of the State of Arizona or possibly less. The northern portion I should say.

Q. Now calling your attention to the period 1941, when you were in the employ of Richfield, Mr. Nicholson was at that time your superior?

A. That is right.

[fol. 1328] Q. Do you recall having had any conversation with Mr. Nicholson as to how you shall carry out these duties that you were just venturing upon?

A. Well, there were very definite matters, of course, which were given to me, on what duties I should perform.

Q. Let's be more specific now. For instance, in connection with the solicitation of a new account, a new retail account?

A. Yes.

Q. Do you recall what instructions were given to you?

A. Of course, my instructions was a sort of an intangible thing. I had to draw on my imagination in order to fulfill some of my instructions, and that was to do a good job of selling, and that is really what my instructions amounted to.

Q. Were you familiar with the contractual relationship that existed between the Richfield Oil Corporation and the service station dealers, as a result of your solicitation?

A. In some instances, yes, sir.

Q. Will you describe briefly to the court what was the transaction that took place from the time you started that negotiation until the time you had the man on the dotted line?

A. In what particular form?

[fol. 1329] Mr. DeMartini: I object to that as ambiguous and not referring to any particular type of station.

The Court: He is just asking that. The witness interposed and asked what type of station you are referring to. Let's take the L-O type.

By Mr. Alexander.

Q. What are the types——

The Court: What types did you have?

The Witness: The contract covering an L-O type of operation, and the contract which has been referred to as the 337.

By Mr. Alexander:

Q. Let's take the L-O type. Are you familiar with the type of agreement that——

A. I was familiar with the type at that time.

The Court: All right. He is asking you about the time when you were active.

The Witness: Yes, sir.

Mr. Alexander: 1941 to 1945.

The Court: Now, answer the question as to the L-O type. What did you tell them?

By Mr. Alexander:

Q. Just describe the negotiations. What did you do?

A. To install an operator,——

Mr. Paradise: Will you speak up just a little louder, please?

The Court: Yes.

[fol. 1330] The Witness: Well, my procedure there would be to establish whether or not the individual being considered was one who we would want in that particular place, and with that being established, then the matter of the physical part of it would be discussed, insofar as what was expected of the man after he was installed there.

By Mr. Alexander:

Q. Well, now, let's have you tell us what the conversation was. You say what was discussed and what was expected. Tell us what was said.

A. The physical operation of these outlets——

Q. No, these expectations you were talking about. I am sorry to continually interrupt you.

A. I don't know if I used that term.

Q. What did you expect?

The Court: What did you expect him to do in the operation of the station?

The Witness: We would expect him to sell a quantity comparable to what we estimated the place was capable of doing, and we would discuss plans and methods to reach that expectation.

By Mr. Alexander:

Q. Now, what was he talking about selling, Mr. Cowan?

A. I am speaking particularly of petroleum products.

Q. Were there other products to be sold?

A. Yes.

[fol. 1331] Q. Was there a discussion had in connection with those also?

A. Oh, yes, sir.

The Court: Now, you are talking about the products of the Richfield Oil Company or the sponsored products?

The Witness: Both, sir.

The Court: Both. Go ahead.

The Witness: And with an agreement between us, we would agree that those figures were satisfactory to both sides. Then the contract was entered into, and the man got under way with his operation.

The Court: Now, will you tell us how did that differ from the other group. The group of stations you are talking about is what has been referred to as the L-O type?

The Witness: Yes, sir.

The Court: Now, how about the other type?

The Witness: Well, the conversation was very much the same.

The Court: It was very much the same. Go ahead.

The Witness: There was no control, of course, over my efforts. I mean, I could not assert any control over the dealer who might have been contracted with under the 337.

The Court: That is right.

The Witness: However, the same persuasive conversation was applied.

[fol. 1332] The Court: All right.

By Mr. Alexander:

Q. Were the same expectations implanted there?

A. The same idea was discussed in probably a little lighter flavor.

Q. Now, Mr. Cowan, turning your attention to the time from 1945 to 1948, when you testified you were a commission agent, in that capacity what was the nature of your duties?

A. The duties as a commission agent was very much like that at the time I was operating as a salaried employee. My manner of payment or compensation was different. That was the primary difference.

Q. What did you do? What was the nature of your duties?

A. I was responsible for the distribution of petroleum products to any and all types of accounts which we may have had in my particular area, and so far as the contracts, I had about the same association in the handling of those contracts that I had, which I have just described.

The Court: The only thing different was your method of pay?

The Witness: Primarily, that was the difference, and I was responsible for all stock which was held in my possession and belonging to Richfield.

The Court: That you had for sale to the retail outlets?

[fol. 1333] The Witness: That's right.

By Mr. Alexander:

Q. At the time the merchandise you were distributing was Richfield's and had passed to the merchandiser?

A. At the time of delivery to that purchaser.

The Court: Did you have a storeroom during that period where you kept accessories, or other things?

The Witness: Yes, sir.

The Court: Before you did not?

The Witness: No, before there was no stock in my possession.

The Court: No stock in your possession. Then you carried all the tires, and accessories, and other things?

The Witness: No, your Honor. I had nothing to do with the distribution of the TBA set-up. I was not a TBA distributor.

The Court: You were not?
The Witness: No.
The Court: What stock did you carry, then?
The Witness: The petroleum products.
The Court: The petroleum products. I beg your pardon.

By Mr. Alexander:

Q. Mr. Cowan, in your distribution of petroleum products during 1945 to 1948, do you recall ever having delivered petroleum products to any service station outlet other than [fol. 1334] the Richfield Oil Corporation's products?
A. Yes, I have.
Q. Do you recall having delivered petroleum gasoline to any retail service station which entered into a contractual relation of the type referred to as L-O and 337 during this period?
A. Would you restate that? I didn't quite follow you.
The Court: You used the words "petroleum" and "gasoline."

Mr. Alexander: I will withdraw the question, your Honor.
The Court: It is confusing. "Petroleum" is the generic term, and gasoline is gasoline.

By Mr. Alexander:

Q. Do you recall, Mr. Cowan, of ever having delivered Richfield petroleum products to a gasoline outlet wherein there was handled another company's gasoline?
A. I have delivered petroleum products, yes.
Q. No, I asked you as to gasoline.
A. Other than gasoline.
The Court: By that you mean greases and oils, don't you?
The Witness: Yes, sir.
The Court: All right. Then, what is your answer as to [fol. 1335] gasoline?
The Witness: No, I don't recall having made any delivery of gasoline.

By Mr. Alexander:

Q. Who was your superior while you were serving in this capacity as commission agent, Mr. Cowan?

A. Mr. Wild, I believe, for the greater portion of the time, and followed by Mr. Schrader.

Q. Did you ever receive instructions from Mr. Schrader or Mr. Wild in connection with the manner in which you should distribute the petroleum products of the Richfield Oil Corporation?

A. I can't recall any specific time. There were often discussions that covered the matter of policy in general.

The Court: Did those discussions as to policy vary in any way from the pattern you have described so far, that is, to push the products which Richfield made, or those which they sponsored?

The Witness: Well, I think our discussion probably covered all phases of it, your Honor.

The Court: All right.

Mr. Alexander: No further questions, your Honor.

The Court: Any questions?

Mr. DeMartini: Just a couple of questions.

[fol. 1336] Cross examination.

By Mr. DeMartini:

Q. You understand the difference between an L-O operator, and a 3-C dealer, or 337 dealer, do you not, Mr. Cowan?

A. I believe I do, sir.

Q. During the time that you were in Arizona, both as an employee and as a commission agent, did you have occasion to install any L-O operators?

A. Yes, sir.

Q. What did you tell them at the time of installation?

A. I think I covered that to some extent, and I will repeat it, on the question that Mr. Alexander asked me, that we discussed the possibilities of that man as an operator in that particular unit, the possibilities for his profit, in other words, and he was quite specifically instructed in the physical upkeep of the property and the advantages that he might benefit from in handling the products which we had at that time for sale.

Q. Did you know that that lease had a 24-hour termination privilege on the part of either party?

A. Yes, sir.

Q. Did you discuss that with him?

A. Yes, sir.

Q. And the reasons that it was in the agreement?

[fol. 1337] A. Yes, sir.

Q. What were the reasons?

A. In that—due to the fact that the property, for one, of course, belonged to Richfield, and that they were not agreeable to leasing the thing over a long period of time, because if his operation become unsatisfactory, then he could go away or he could even leave the place, for that matter, leave it closed, and it would be an unsatisfactory operation, and for that reason there was a short term operation period specified.

Q. In other words, is it correct to state that he was told that if he did not operate it properly "we" would exercise the termination privilege?

A. That's right.

Q. Is there such a thing as installation of a 337 operator, or was there during the term of your tenure?

A. Not to my knowledge.

Q. A 337 operator, or, dealer, rather, is one to whom you sell gasoline and who is in possession of a station; isn't that correct?

A. I think that's true, in most cases that I know about, at least.

Q. Did you issue any instructions in regard to maintenance or control of a 337 dealer?

A. Persuasive type only.

[fol. 1338] Mr. DeMartini: That is all.

The Court: And that persuasion relates to what? Let's wind up with a positive answer.

The Witness: Well, your Honor, in a case of that kind, normally that property belonged to that man, and it was really an impossibility to tell him what to do, so we appealed to his sense of good judgment.

The Court: To use your products?

The Witness: That's right, and to police the place.

Mr. DeMartini: One further question?

The Court: All right.

By Mr. DeMartini:

Q. If you did tell him what to do, and he did not comply with your instructions, what could you do about it?

A. Not anything.

The Court: I will ask this question: Did you ever have any way of policing either type as to whether they were conforming to your standards, both as to care of the station or as to products sold?

The Witness: Well, it was one of my duties, sir,——

The Court: You did that?

The Witness: —to look over and see after that sort of thing.

The Court: All right, gentlemen. You may be excused.

(Witness excused.)

[fol. 1339-1342] The Court: Tomorrow morning, gentlemen.

(Whereupon at 5:20 o'clock p. m., Wednesday, May 9, 1951, an adjournment was taken until Thursday, May 10, 1951, at 10:00 o'clock a. m.)

[fol. 1343] Thursday, May 10, 1951. 10:00 A.M.

The Court: All right, gentlemen. Call your next witness.

Mr. Somerville: The government calls as its next witness Mr. Duarte.

Joseph J. Duarte, Jr., called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

The Clerk: Will you state your name, please?

By Mr. Somerville:

Q. Would you state your name for the record, sir?
A. You have to speak louder. I don't hear very good.
The Court: You can come up near the witness.

By Mr. Somerville:

Q. Would you tell the court your name?
A. Joseph J. Duarte, Jr.
Q. Where do you reside, Mr. Duarte?
A. What is that?
Q. Where do you live?

A. Hayward; Hayward, California.

Q. At the present time how are you employed?

[fol. 1344] A. I work for Ford.

Q. Calling your attention to the period of around November, 1942, what was your employment at that time?

A. I was a Richfield agent.

Q. A Richfield agent. Do you mean a commission bulk plant agent?

A. That's right.

Q. How long did you act in the capacity of a commission bulk plant agent?

A. From September, '38 to October, 1945.

Q. Did you have a written agreement with Richfield Oil Corporation concerning the operation of that bulk plant?

A. Yes, sir.

Mr. Somerville: The government has had marked for identification Exhibit 6-F, commission agency agreement on Form 537, print date 6-42, between Richfield Oil Corporation and Joseph J. Duarte, Jr. and Victor A. Costa, a copartnership.

The government offers this in evidence as its exhibit next in order.

Mr. Paradise: It is objected to on the ground of immateriality. There is no issue in this suit as to the relationship between this defendant and the commission agent.

Mr. Somerville: Your Honor, this is the same type of agreement, except a different print date, as the agreements [fol. 1345] which were offered into evidence yesterday.

The Court: Let me see it.

(The document was handed to the court.)

Mr. Somerville: That was one form of agreement that wasn't offered, one print date that wasn't included in that group.

The Court: All right. Overruled.

(The document referred to was marked Plaintiff's Exhibit 6-F, and was received in evidence.)

By Mr. Somerville:

Q. Now, with respect to your operations as a bulk plant agent, Mr. Duarte, did you sell the petroleum products of the Richfield Oil Corporation?

A. Yes, sir.

Q. At the time you took over this bulk plant, did you also handle TBA? You understand what I mean by TBA?

A. Yes, sir.

Q. Tires, batteries, and accessories, automotive accessories?

A. Yes, sir.

Q. Did you handle those at the beginning when you took over the bulk plant?

A. Well, I am not quite sure if it was the first year or the second year, but it was either 1940 or '41 that they approached us to sell tires, batteries and accessories.

Q. Are you familiar, Mr. Duarte, with this agreement, [fol. 1346] Government's Exhibit 6-F?

A. Yes. The day we signed our original agreement in 1938, the Richfield Oil Corporation read it to us.

Q. And this is a subsequent agreement of a later date?

A. Well, I wouldn't know if it is the same as '38 or not.

Q. Well, this is a subsequent agreement.

A. O. K.

Q. You are familiar with this particular agreement, are you?

A. I signed one of those, yes.

[fol. 1347] Q. I call your attention to this first paragraph and ask you what the provision is with respect to the termination of that agreement?

A. Well, it was a 24-hour basis and either party could cancel the agreement at any time.

Q. Now, I call your attention to paragraph 2 and ask you what business you were required to solicit under the agreement?

Mr. DeMartini: I will object to this as calling for a conclusion of the witness. The instrument speaks for itself.

The Court: Well, what he did under it. I do not think it should be interpreted. You are talking now of the other parties to the contract. All he did is to take one of the agencies. He is not in the same position as the representa-

tive of the company was. Any addition to the written agreement or any elaboration of it may have made a statement which would transcend the agreement, which could have been binding. You cannot ask him to interpret the agreement. The objection is sustained. That is what he did.

Mr. Somerville: I was not attempting to interpret the agreement.

Q. Mr. Duarte, under this commission agency agreement or in connection with it were you approached by anyone from Richfield with respect to handling and distributing TBA products?

[fol. 1348] A. Yes, we were.

Q. And, as I understand that, that was in 1941-1942, around that period?

A. As far as I can remember, yes.

Q. And who from Richfield Oil Corporation approached you with respect to that?

A. At that particular time it was a gentleman by the name of Jack Walcott.

Q. Do you recall what his capacity was with Richfield?

A. Well, at that time things were bad and he asked us to take TBA.

Q. Pardon. I asked you if you knew what his capacity with Richfield was.

A. Oh. He was a territorial salesman.

Q. A territorial salesman?

A. That is right.

Q. And as territorial salesman he would contact you with respect to sales of Richfield products in your area?

A. That is right.

Q. What did he say? First of all, where did these conversations occur?

A. At our bulk plant.

Q. Were there any other parties present?

A. I don't remember. I think there was only Mr. Walcott. I am not sure.

[fol. 1349] Q. Was your partner present, Mr. Costa?

A. My partner, yes, sir.

Q. Would you tell the court just what the proposition or conversations were at that time concerning TBA?

A. Well, as far as I can remember, he asked us that Richfield had some big tie-up with Goodyear tires and bat-

teries and that their deal was closed, and it was up to the agent, Richfield agent, to distribute these products to our stations. Well, before it got that far, we decided that we couldn't handle it because we couldn't afford it.

Q. You did not want to handle the TBA line?

A. We didn't want it because we couldn't afford it.

Q. At that time was there anything further said——

A. Yes, sir.

Q. —about your handling these products?

A. Yes, sir.

Q. What was said?

A. He said if we couldn't handle it, that it would be their policy to put in a new agent that could, because they have to handle those products.

Mr. DeMartini: I object to this as immaterial, your Honor, and not within the issues of the case, and move that the answer be stricken.

Mr. Somerville: The materiality will be shown here as the witness testifies further. It is a preliminary question, [fol. 1350] your Honor.

The Court: All right, I will reserve a motion to strike.

By Mr. Somerville:

Q. What was the result of that? Did you take on the TBA line?

A. Well, we went out and borrowed the money and took it.

Q. Was anything said at that time or subsequently with respect to the accounts to whom you would sell these products?

A. We were asked——

Mr. DeMartini: I want to make an objection, your Honor. I do not know the time that counsel refers to.

The Court: All right.

By Mr. Somerville:

Q. Would you explain, or, rather, relate the approximate time that any conversation occurred and who the parties making the conversation concerning the customers to whom you were to sell the TBA products?

A. As far as I can remember we were told to sell all Richfield outlets, but mostly the Richfield Company units; that we couldn't make any independent dealer, which he owned his own station and pumps, buy the tires, batteries and accessories because he didn't have to, because he had no contract with Richfield; that he was employed as one of their company units. That is all I can remember.

Q. Nothing was said about selling these products to all units regardless of a category?

[fol. 1351] Mr. DeMartini: I will object to this as leading, your Honor, and suggestive.

A. No.

The Court: I will ask you to desist from asking leading questions from the witness. He is intelligent and knows what was said.

Mr. Somerville: All right.

A. That the company units were the ones that Richfield really wanted to buy TBA, and they had to buy it. That is why they put it in our bulk plant.

Mr. DeMartini: I will object to that and move that the answer be stricken, your Honor, as a conclusion of the witness.

The Court: No, no. Are you telling us what this man told you?

The Witness: That is right.

The Court: I see. All right.

By Mr. Somerville:

Q. Who was this man?

A. Jack Walcott. We were supposed to deliver the products to the Richfield dealer and if he didn't want to buy those products, we were to put another new dealer in that would. That was their policy.

Q. Would you tell the court the area in which your bulk plant operations were confined?

A. Southern Alameda County.

[fol. 1352] Q. Would you sell to Richfield service stations within all of that area?

A. Yes, sir.

Q. Did you yourself make any contact with the Richfield service stations concerning the sale of Richfield TBA approved products and petroleum products?

A. I delivered gas and oil with a truck to the stations. I was in contact with them every day.

Q. Going back now for a moment to these conversations with Mr. Wolcott, was anything said with respect to whether or not you could sell any other products than these authorized TBA products to the service stations?

A. Well, getting back to Richfield service stations, they wanted authorized products delivered to the company units, and no other product. They couldn't buy any other product but Richfield approved products.

Q. You don't understand my question, Mr. Duarte. My question is this: Preliminarily, let me ask you, did they explain what products were authorized?

A. Yes.

Q. Was it explained whether or not you could handle any other products?

A. No, they couldn't buy no other products.

Q. I am talking about you. Could you handle any other products?

[fol. 1353] A. Oh, no.

Q. Was anything said about whether or not you could sell outside non-approved products directly competitive with the products handled by you and approved by Richfield to Richfield service stations?

A. Well, we knew at the time——

Mr. DeMartini: I object. That is immaterial.

The Court: I will sustain the objection. He has already told us what he was told by this man Jack Wolcott.

The Witness: Wolcott, yes, your Honor.

By Mr. Somerville:

Q. Mr. Duarte, in your contacts with the trade, did you sell approved TBA merchandise and petroleum products to the Richfield stations in your area?

A. Yes, sir.

Q. Did you distinguish between stations, leased out type of stations, or other types of stations or accounts?

Mr. DeMartini: I object to that as no proper foundation laid.

The Court: Overruled. Go ahead.

The Witness: I sold everybody that wanted to buy it.

By Mr. Somerville:

Q. All right. Now, in connection with your contacting the trade, contacting the service stations, would you report sales that you made to any representative of the Richfield Oil Corporation?

Mr. DeMartini: I will object to that.

[fol. 1354] The Witness: I don't know what you mean.

By Mr. Sommerville:

Q. Did you report sales of approved TBA items to Richfield.

A. Report it to Richfield?

Mr. Somerville: Yes.

Mr. DeMartini: I think that is immaterial.

The Witness: I don't know——

Mr. DeMartini: The use of the term "representative" is vague and ambiguous.

The Court: Go ahead.

The Witness: What do you mean?

By Mr. Somerville:

Q. I am not talking about whether you personally made out reports, but did your company, either you or your partner——

A. Yes.

Q. —report to Richfield on any forms the sales which you made of authorized TBA merchandise to the Richfield service stations?

A. Well, either he or the girl in the office did that. I never had nothing to do with the office.

Q. All right. But you do know of your own knowledge that that was done?

A. As far as I could remember, I think we were supposed to, or something like that.

Q. You don't recall any conversations about that?

[fol. 1355] A. No.

Q. Now, Mr. Duarte, calling your attention to a service station in Hayward, California, operated by Peter Koenen, K-o-e-n-e-n.

A. Yes.

Q. Are you familiar with that service station?

A. Yes. That has been a Richfield station for about 30 years.

Q. And did you contact that station?

A. Every day. Every other day, rather.

Q. Do you know whether or not that is a leased out type, or whether the operator——

A. That was privately owned by Mr. Koenen.

Q. With respect to that station, at any time was there any mention made by any representative of Richfield to you with respect to any competitive products at that station?

Mr. DeMartini: I will object to the question, your Honor, unless an instrument is introduced in writing to bring the station within the issues of this case.

The Court: Overruled. Go ahead.

The Witness: Now, let's get back there again.

Mr. Somerville: Would you read the question, please?

(The question was read.)

The Witness: Thank you. Yes, there was a gentleman by the name of Al Wallace, he was another territorial sales-[fol. 1356] man for Richfield, and he asked me to contact Mr. Koenen, being that his service station was on the main highway, to see that he got rid of his competitive oil, that Richfield Oil Company had painted his unit, and if he didn't get rid of it, they would cancel his lease. And that's why I went down to Mr. Koenen and told him that Richfield didn't like the idea that he was buying competitive oil. So to get along, and I didn't want to lose the unit, we had him put the oil in the garage, and kept one case in the station, and when customers asked for it, he gave it to them, but he wouldn't display it because it was against Richfield's policy.

Mr. Somerville: I would like to clarify one thing.

Mr. Paradise: Your Honor, is it appropriate to make a motion to strike at this time? I think the witness' answer

reveals the difficulty of having testimony of this nature without benefit of the instrument before the court. The witness mentioned there was a lease to be terminated, and in the same breath he mentioned that this might have been an independent station.

The Witness: It was.

Mr. Paradise: I don't think the witness is qualified to tell. That is a question for this court, and before this witness should be permitted to testify concerning any particular station, a proper foundation should be laid, consisting [fol. 1357] of the instrument being before the court. Otherwise, it is a matter of complete misunderstanding.

The Court: I do not think it is necessary as to each of these items to tie them down at the very moment. I agree that in the last analysis it is important to know what type of station this man was operating and, furthermore, I am going to make this observation at the present time. I am not going to draw in the record at the present time the distinction that you think exists between the L-O stations and the other stations, what you call an independent station. I am going to allow the government to present evidence on its theory that the result is the same. Then it will be up to you, at the end of the government's case, to make a motion either to dismiss or to put out of the case the stations that you think are independent. If you convince me of your interpretation of the contract, then I can merely confine your proof to the others. Otherwise, I have to rule at the present time upon your contention.

Mr. Paradise: No, we are not asking for a ruling by the court at this time that the relationship between Richfield and the operators of those stations is not independent, as we contend, or is independent.

The Court: Yes.

Mr. Paradise: But inasmuch as the chief, if not one of the most vital issues in this case is the difference in relationship between Richfield and the L-O stations and the [fol. 1358] relationship between Richfield and the independent stations, I think it is only fair, both to the witness and to the court, and for the purpose of a proper interpretation of the record to keep distinct the type of station it is. The government can very simply ask about the two types

separately, and if they contend there is no difference in relationship, the proof will so show.

The Court: I will deny the motion to strike at the present time, but if this witness knows the type of station, if he, like others, knows the difference in L-O stations and independent stations, I think he should state. Do you know the difference between them.

The Witness: That was, your Honor, that was an independent station.

The Court: You mean what Richfield calls a Richfield independent station?

The Witness: Yes, sir.

The Court: Not an independent station along——

The Witness: An independent Richfield station.

The Court: And not what is known as an L-O station?

The Witness: Yes, your Honor.

The Court: All right. Go ahead.

By Mr. Somerville:

Q. Was there anything said concerning TBA products at that station?

A. Will you speak a little louder, please?

[fol. 1359] Q. Was anything said, Mr. Duarte, with respect to TBA products at that station?

Mr. Paradise: Is your question directed to his conversation with Mr. Wallace?

Mr. Somerville: Yes, sir.

The Witness: Well, that particular station did not buy any TBA products, because he was a Richfield independent dealer.

By Mr. Somerville:

Q. What I want to ask you about is, sir——

The Court: Not whether he bought, but whether this was discussed between you and the representative of Richfield.

By Mr. Somerville:

Q. Was there anything said by the Richfield representative concerning the fact that he didn't buy,—anything said to you concerning his failure to buy?

A. No, sir. To clarify that, I will say the discussion——

Mr. Paradise: The question calls for "Yes" or "No."

By Mr. Somerville:

Q. Was there any conversation? First of all, let's establish that.

A. Yes, there was a conversation.

Q. With respect to TBA?

A. To all stations. We are not going to any particular station.

Q. If there was no conversation, let's forget it.

[fol. 1360] A. No.

Q. Calling your attention now to a service station operated by Al Roush, R-o-u-s-h, at 301 Castro Street, Hayward, California, are you familiar with that station?

A. Yes, sir.

Q. Did you make sales or attempt to make sales at that station?

A. Yes.

Q. At any time was your attention called to the competitive products being handled at that station by any representative of Richfield? Did you ever have any conversation concerning that station with someone?

A. No, not that particular station.

Q. With respect to petroleum products, now, lubricating oils and gasoline, was there any general policy enunciated in any conversations between you and any representative of Richfield concerning the display or handling of competitive oils?

Mr. Paradise: Objected to as calling for the conclusion of the witness. He can ask for the conversation.

The Court: He can give a "Yes" or "No" answer.

By Mr. Somerville:

Q. Did you have any conversations?

A. Clear it up a little.

The Court: In view of the witness' difficulty, the implanting of a discussion or a particular conversation will be [fol. 1361] helpful.

By Mr. Somerville:

Q. Did Mr. Wallace have any conversations with you concerning Richfield's policy about competitive oils being delivered with respect to all of these stations?

A. The discussion I had with Mr. Wallace was to see that all L-O units used 100 per cent Richfield products and approved accessories.

Q. It didn't go any further than that?

A. That's it.

Mr. Somerville: I think that will be all.

The Court: Cross-examine.

Cross Examination

By Mr. DeMartini:

Q. Mr. Duarte, what do you understand the difference to be between an L-O Richfield station and an independent station?

A. Explain that again.

Q. What do you state is the difference between an L-O station and an independent Richfield station?

A. As far as I understand it, and L-O unit is a leased out Richfield station, and an independent station is that a dealer owns his building, his pumps, and the property. He is an independent dealer. An L-O unit, as far as I was con- [fol. 1362] cerned, was leased from a property owner, where Richfield wrote a long contract and, then, in turn, leased to a dealer, but Richfield held the main lease on it for 10 years, 20 years, whatever it was.

Q. What was the type of lease that Richfield executed with the dealer or operator in that situation? What was the termination privilege?

A. Of a dealer?

Q. Of an operator under an L-O lease.

A. 24 hours.

Q. Do you know the policy or practice of Richfield with respect to the termination of that lease? Under what circumstances it would act to terminate the 542 lease?

A. Yes.

Q. What were they?

A. The way we were told they had to keep the station neat, they had to pump the gallonage, that Richfield figured that they were paying so much rent for the property already and they had to get that gallonage up there. They would leave them there for a time, 30 or 90 days, whatever it was. If they didn't get the gallonage up and the station was running down, Richfield would ask us as the agents to terminate the lease and get a new operator.

Q. Now, what was your understanding of the type of paper that was executed at that time with the independent station? [fol. 1363] A. At that time, as far as I can remember, if we went to an independent station, and he wanted to change his products to Richfield, we would write a two-year lease, which was called a paint agreement—a paint agreement. And as long as Richfield painted that building, they were to buy Richfield products only. As long as Richfield painted the building, they couldn't buy any other products.

Q. I will show you Richfield's painting agreements, which are in evidence as plaintiff's Exhibit 5-A, the print of which is dated 8-37, and that which is in evidence as Plaintiff's Exhibit 5-C, and ask you whether those are the instruments to which you refer as the paint agreements.

Mr. Somerville: We will object to that line of interrogation, your Honor, on the ground it goes beyond the scope of the direct examination.

The Witness: I can't hear.

The Court: No, I think in view of the position this man had, it is proper to ask him that, to go into his knowledge of the difference between these agreements. Go ahead. You may answer.

The Witness: Are you talking to me, your Honor?

The Court: Go ahead.

Mr. DeMartini: Will you read the question, please?

(The question was read.)

[fol. 1364] The Witness: Now, answering your question, we would take the leases with our territorial salesman to the new account, and he would sign them.

By Mr. DeMartini:

Q. I am asking you—your answer is not responsive to my question, Mr. Duarte. You refer to paint agreements which were in the nature of leases, which were upon a minimum of two years. Are those the instruments to which you refer?

A. I don't remember this. I don't remember this.

Q. This is not the instrument to which you refer, then?

A. I don't remember that lease.

Q. You referred to this instrument as a lease?

A. So far as we were told by Richfield, it was a two-year lease, a painting agreement, a two-year lease. I am only trying to tell you what I was told.

Q. Do you know the terms of that instrument?

A. As far as I can remember, six years back or better, that was a painting agreement, and all I can tell you is this, that Richfield would preach to us this thing, that that painting agreement, while that station was painted Richfield colors, they asked us to tell the operator that while those Richfield colors were there and they spent money to paint it, that they shouldn't handle anything but Richfield products.

Q. Well, do you know the nature of the clause or agree-[fol. 1365] ment which gave Richfield the right to dispossess that so-called holder of the paint agreement from the premises?

A. I am telling you what our superiors told us to take over to the dealers.

Q. Then you don't know yourself the terms of that agreement?

A. As far as our positions were concerned, that is the agreement, and I knew that it ran from one to two years, and I don't believe it was more than two years, unless the operator wanted to sign for more than two years.

Q. Do you know the termination privileges that were contained in that agreement? Did you ever read one?

A. No, sir, I never.

Q. And that is the instrument that you refer to as being held by Mr. Koenen?

A. Mr. Koenen?

Q. Yes.

Mr. Somerville: I will object.
The Witness: I had a lot of stations like Mr. Koenen's.

By Mr. DeMartini:

Q. But you testified——
The Court: Ask him if it was that type.

Mr. DeMartini: All right.

By Mr. DeMartini:

Q. Is that the type of instrument?
A. That is the type, sir. It was an absolutely independent dealer, Richfield dealer, independent; not L-O units, inde-
[fol. 1366] pendent.
Q. And by "independent" you mean?
The Court: Talk about indoctrination. You certainly have the boys indoctrinated on the difference between an L-O unit and an independent.
The Witness: That is the difference, independent. He owned the station and he owned the property, and he was in business for himself. Richfield's L-O units, they worked for Richfield.
The Court: All right.

By Mr. DeMartini:

Q. But you don't know the terms of this instrument which gave us the right to dispossess?
A. Gave me the right through my boss, L. A. Wallace.
Q. Well, I will drop the further questions.
A. Well, maybe I am wrong, but I——

Mr. Somerville: That will be all.
The Court: Just wait a minute.

By Mr. DeMartini:

Q. Who in Richfield told you to dispossess this man or take possession of the station because he sold competitive oil?
A. Nobody told me to take possession of any station. You asked me. If they didn't do it the way Richfield wanted them to, they would cancel out the lease. That's what we

are talking about. We are talking about independent dealers now.

[fol. 1367] Q. Yes, independent dealers.

A. That they would cancel out his paint contract.

Q. They would cancel out his paint contract?

A. And he would be all through buying Richfield products.

Q. In other words, they would not dispossess him from the service station?

A. Oh yes, he would be through buying Richfield products in that particular station.

Q. But did Richfield acquire possession of that station?

A. No, because I would go along with the dealer, and I didn't want to lose it, because it would be out of my pocket, so we would patch things up and let it ride.

Q. By what right did Richfield itself acquire possession?

A. What right they had, I don't know. That's their business.

Q. Isn't it true, as a matter of fact, Mr. Duarte, that all of the independent dealers did handle competitive oils and TBA in your area?

A. Because Richfield couldn't stop them. They tried to.

Q. They tried to?

A. They tried to, but it didn't work.

[fol. 1368] Q. And all of the L-O's were forced to buy products exclusively?

A. 100 per cent Richfield approved products or we were told to check them out and get new dealers.

Mr. DeMartini: That is all.

Mr. Somerville: No redirect. Thank you, Mr. Duarte.

The Court: All right, Mr. Duarte. You may be excused.

(Witness excused.)

The Court: Call your next witness.

Mr. Somerville: The government's next witness is Mr. James Jones.

J. M. JONES, called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

The Clerk: Will you state your name, please?
The Witness: J. M. Jones.
The Clerk: J. M. Jones?
The Witness: That's right.
The Clerk: Be seated, please.

By Mr. Somerville:

Q. What is your name, sir?
A. J. M. Jones.
[fol. 1369] Q. Where do you reside?
A. Arcadia.
Q. What business are you in?
A. Auto supplies.
Q. Calling your attention to the period, oh, back about in 1944, would you tell the court what your employment was, or what business you were in?
A. Well, in 1944 I was a commission agent in Merced for Richfield.
Q. Bulk plant commission agent?
A. Yes, sir.
Q. For what company?
A. Richfield.
Q. As a bulk plant commission agent, what area did you service?
A. Most of Merced County.
Q. Did that include sales of petroleum products to Richfield Service stations?
A. That is correct.
Q. Of all categories?
A. That's right.
Q. At that particular time were you also handling TBA products?
A. In a rather small way, yes.
Q. Was that under some arrangement with Richfield?
[fol. 1370] A. Well, it was not under any written agree-

ment or arrangement. It was an oral agreement to handle it.

Q. Were you required to handle only Richfield products at that time?

Mr. Paradise: I will object to the question as calling for the conclusion of the witness, and not the best evidence.

The Court: Yes. Sustained.

Mr. Paradise: He testified he has a written agreement.

Mr. Somerville: I withdraw that question.

By Mr. Somerville:

Q. Mr. Jones, during your period as a bulk plant agent in Merced, did you become familiar with the various types of agreements in use between Richfield and the service station operators?

A. I believe so. There are some I didn't see, I am sure.

Q. Do you know what we mean when we refer to a leased out station?

A. I believe so.

Q. You know what we mean when we refer to a dealer under a sales—337 sales contract or a 3-C deal?

A. Yes.

Q. Now, how long were you a commission agent in that area?

A. About 20 months.

Q. Thereafter did you operate any other bulk plant for [fol. 1371] Richfield?

A. No.

Q. Calling your attention to the period beginning about December, 1945, what was your business at that time?

A. I wasn't doing anything in the interim, until I came down here and went with Richfield as a TBA distributor.

Q. Now, did you have any written agreements with Richfield?

A. None.

Q. How long a period did you act as a TBA distributor?

A. Well, from December, 1945 until September of 1949.

Mr. Paradise: Will you speak a little louder, please Mr. Jones? We can't hear you over here.

The Witness: From December, 1945 to September of 1949.

The Court: Unless you are going to show this witness documents, I think it would be better if you would stay away from him, because then he will know he is not talking to you, but talking to the rest of us. I allowed you to stand near the other gentleman because he had difficulty in hearing. This witness seems to be all right.

By Mr. Somerville:

Q. I believe you testified that your arrangement with Richfield in this TBA distributorship was entirely oral?

A. That's correct.

Q. Who made that arrangement with you?

[fol. 1372] A. Well, originally it was made with Mr. Burgner.

Q. I suppose there were some conversations concerning this transaction?

A. That's correct.

Q. When did they occur?

A. Possibly in November of '45.

Q. Were there any other parties present?

A. Well, I believe Mr. East was there.

Q. Mr. East and Mr. Burgner?

A. That is correct.

Q. Can you tell the court what positions were held by them, what capacity they were in for Richfield?

Mr. Paradise: Why don't you ask him if they were employees?

By Mr. Somerville:

Q. Were they Richfield employees?

A. Yes.

Q. What capacity were they acting in, if you know?

A. Mr. Burgner was assistant division manager, and Mr. East, I believe they called him at the time special representative.

Q. They approached you with respect to handling a TBA distributorship?

A. No, I approached them.

Q. You approached them. At that particular time was it explained what the distributorship would cover, or what [fol. 1373] the terms of the arrangement would be?

A. Well, I assume so, yes.

Q. What was said concerning what products you should handle?

A. Well, they have what they call a TBA manual, and that was it. You were to handle that.

Q. Were those products described as authorized products?

A. Well, they wouldn't—that's right.

Q. Was there anything said at that time with respect to whom you should sell to?

A. Well, we were to sell everybody we could.

Q. Was there anything specifically said with respect to the Richfield service stations?

A. We were given a list of them, yes.

Q. Were those confined to a particular area?

A. That's correct.

Q. What was the area?

A. It was what was considered as the Hawthorne bulk plant area and the Santa Monica bulk plant area.

Q. Subsequently was there any change in your area?

A. Not that I recall.

Q. All during the period of your TBA distributorship you distributed in those areas?

A. Oh, no. I did change to the Pasadena area.

Q. What territory did you cover there?

[fol. 1374] A. Well, it would be what would be considered as the Pasadena bulk plant area, everything serviced by the Pasadena bulk plant.

Q. That would include San Gabriel, Alhambra, and Arcadia?

A. That is right.

Q. Going back to the original discussions with respect to your TBA distributorship, what, if anything, was said about your handling outside products directly competitive to approved products designated by Richfield?

Mr. Paradise: Objected to as immaterial.

The Court: Overruled.

The Witness: We weren't supposed to handle anything that would be competitive with a product that was in the TBA manual.

By Mr. Somerville:

Q. Was anything said at that time with respect to what products you would be permitted to sell to Richfield service stations?

A. I didn't quite get you.

Q. Was anything said in that original transaction about whether you could sell approved products or non-approved products to Richfield service stations?

A. We could sell as long as it didn't conflict.

Mr. Paradise: As long as what? I didn't hear that.

The Witness: That it did not conflict with an approved [fol. 1375] item.

By Mr. Somerville:

Q. What do you mean by that?

A. Well, a competitive oil filter or a competitive spark plug. We were to handle the Champion spark plugs, and that's all we were to handle. We were not to handle the A-C.

Q. Other spark plugs and oil filters would be directly competitive?

A. That's right.

The Court: Give us an illustration of a non-competitive item.

The Witness: Air gauges, air hoses, expendable supplies that weren't in the Richfield manual we could handle.

The Court: I see.

By Mr. Somerville:

Q. Do you mean, then, that those particular categories of automotive accessories were not approved or handled by Richfield, that is, there wasn't any equivalent product?

A. That's right.

Q. Now, with respect to those items directly competitive with the approved items, was there anything said with respect to whether or not you could handle those items or sell those items to the Richfield service stations?

A. Well, I can't recall any specific conversation on it, but it was strictly taboo though.

[fol. 1376] Mr. Paradise: I move the witness' answer commencing with "it was strictly taboo" be stricken.

The Court: Yes.

The Witness: Well, we were not supposed to handle anything that was competitive.

Mr. Paradise: I move that be stricken.

The Court: That may be stricken. The difficulty is that we have to know on what basis that supposition is grounded. You have to tell us who told you, and you have to give the names of the certain persons, and if you remember any conversation in which these men stressed that point, that is all right.

The Witness: Well, yes. In Pasadena I can recall an incident with Mr. East. At that time he had been promoted to assistant——

By Mr. Somerville:

Q. When did this occur?

A. Well, it would have been in '49. This Mr. East came out to our warehouse and saw some Fram filters in there, and asked us not to handle them.

Q. Were those Fram filters—or, what was the approved filter?

A. Purolator.

Q. At any time during your distributorship have there been any conversations with respect to whether or not Richfield stations were to handle approved products 100 per cent?

[fol. 1377] A. Well, they were supposed to, yes.

Mr. Paradise: I move——

By Mr. Somerville:

Q. My question was, was there any conversation?

The Court: Again we must go back to a conversation. You can say "Yes," if that is it, and then you can try to remember.

The Witness: Well, yes.

By Mr. Somerville:

Q. When, and with whom were those conversations?

A. Well, the conversations were probably more prevalent in the summer of '49 when Richfield had quite a contest on,

a sales contest, and there was lots of conversations regarding——

Q. With whom?

A. With the merchandisers, the various merchandisers.

Q. Who were some of them?

A. Mr. Hagins, Mr. Weir, Mr. Zimmerman, Mr. Bergman, who was the branch manager in Pasadena.

Q. In making sales of TBA products to Richfield service stations, did you distinguish between classes of stations, or did you sell them all?

A. We tried to sell them all.

Mr. Somerville: May I see Government's Exhibit 7, please?

(The document was handed to counsel.)

By Mr. Somerville:

Q. I hand you Government's Exhibit No. 7 entitled, [fol. 1378] "Richfield TBA Distributor's Monthly Report," and ask you, Mr. Jones, if you are familiar with that report.

A. I am.

Q. Would you tell the court what you were required to do, if anything, with respect to that report?

A. We would break it down by the invoice and fill the report out by station and by units, and send it to Richfield.

Q. Were you required to do that?

A. Yes.

Mr. Paradise: That calls for the conclusion of the witness, I think. Counsel's examination has been leading and suggestive. I haven't objected, but I think he should conduct the examination properly.

The Court: Objection sustained. I think it was justified with the other witness who had difficulty in hearing, but this man I think is all right, and I think you should direct his attention to specific items rather than to ask leading questions.

By Mr. Somerville:

Q. Did you fill out this report and report your sales?

A. Either myself or the girl who worked for me, yes.

Q. To whom did you report those sales?

A. I had to send them in to Mr. East.

The Court: How often?

[fol. 1379] The Witness: Once a month.

The Court: Once a month. All right.

By Mr. Somerville:

Q. Were there any situations in which discussions were held with anyone from Richfield concerning those reports?

A. Yes.

Q. What was the nature of those discussions, and with whom?

A. Well, it was usually with the merchandiser that had charge of a particular station, of trying to get the volume up in that particular unit.

Q. What were those discussions about?

A. Various ways of trying to get more volume out of them.

Q. Would your attention ever be called to any particular station whose sales were low,——

A. Yes.

Q. ——or would your attention ever be called to the fact that any station was handling competitive products, directly competitive with approved products?

A. It probably was, but it wasn't in my—I couldn't do anything about it. It would be up to the merchandiser to handle it from then on.

Q. What I am trying to get at, did the merchandisers contact you with respect to competitive situations at par-

[fol. 1380] ticular stations?

A. No.

Q. Did you work with the merchandisers in any manner?

A. Yes.

Q. In what manner?

A. Working with them, going out calling on the stations.

Q. Calling your attention to a service station operated by a man by the name of Bill Shaffer, do you recall that station?

A. Bill Shaffer, yes, sir.

Q. Is it a Richfield service station?

A. Yes, sir.

Q. Where is it located?

A. California and Wright, Pasadena.

Q. At any time were there any conversations concerning the competitive situation at that station?

A. No.

Q. I am talking about conversations with any representative of Richfield?

A. That's right.

Q. Did this operator purchase much TBA?

A. Not too much.

Q. Was anything ever said about that?

Mr. Paradise: I object to the question. He has denied conversations.

[fol. 1381] The Court: Overruled.

The Witness: Well, we had never had any conversations regarding competitive products in there, but——

By Mr. Somerville:

Q. Did you ever have any conversation regarding the low amount of sales?

A. Oh, yes.

Q. With whom were those conversations?

A. Mr. Weir, the merchandiser.

Q. When did those conversations occur?

A. Well, as I say, they were—the conversations were more prevalent in the summer of 1949 when this contest was on.

Q. What was said by Mr. Weir?

A. I can recall of one instance when Mr. Weir and I went down to the station and took quite a good-sized order from the man, and I couldn't deliver that size order because it was too much for the man to carry in the station. It was overstocking him. So I wrote phony invoices for part of it, to cover it, to enter on the 1079, I believe it was called.

Q. Concerning this contest, when did this contest occur?

A. If I recall, it was the four months of May, June, July, and August, of 1949.

Q. What was the nature of the contest?

[fol. 1382] Q. Well, it was a sales contest covering all petroleum items.

The Court: Competing against one another? You were competing against one another?

The Witness: No. It was a contest for the stations, to compete against one another.

The Court: Oh, the stations were competing.

The Witness: And also the company personnel were competing, too, in their own categories.

By Mr. Somerville:

Q. As a part of that contest do you know of any situations where a service station operator may have been forced to take products?

A. Oh, yes.

Mr. Paradise: That calls for the conclusion of the witness. I think we are entitled to an examination concerning the facts, your Honor.

Mr. Somerville: I will reframe that question.

By Mr. Somerville:

Q. Concerning that contest, did you make any special effort to sell Richfield service stations?

A. Oh, yes.

Q. Did you ever have a situation where you approached a service station and requested him to purchase additional quantities of TBA?

A. Yes.

[fol. 1383] Mr. Paradise: That is leading and suggestive, and also calls for hearsay.

The Court: It is merely——

By Mr. Somerville:

Q. Let's call your attention specifically to a service station in La Canada operated by Wallie McCoy. Are you familiar with that station?

A. I am.

Q. Is that a Richfield station?

A. That's right, but it is not in La Canada. It is on the corner of Orange Grove—let me see—and Lincoln.

Q. Do you recall any situation with respect to that service station in which any Richfield representative instructed you to demand that operator take certain products?

Mr. Paradise: That is leading and suggestive. Why doesn't counsel ask questions——

The Court: I think that is leading and suggestive. He may ask what he remembers about an individual. Do you remember specifically what you did in that case?

The Witness: The only thing I can remember in that particular case was a conversation between Wallie McCoy and myself.

The Court: Go ahead and tell us about that.

Mr. Paradise: Between whom?

The Witness: Between Wallie McCoy, who was the operator and myself.

[fol. 1384] Mr. Paradise: I object to that as hearsay.

The Court: Hearsay as to whom?

Mr. Paradise: The witness is talking about a conversation between him and this Mr. McCoy, who is a service station dealer.

The Court: That is certainly proper. He was acting in the capacity of a distributor, and his conversation following instructions is in the line of agency.

Mr. Paradise: Well, the nature of this man's employment or relationship with Richfield has not been shown. I would then object upon the ground of lack of foundation. This witness can't bind Richfield by any statement of his.

The Court: He can bind them to the extent that he is told to follow a policy and he follows it with regard to the station.

Mr. Paradise: But all that appears about this witness' qualifications, I submit to the court, is that he is a distributor, who is buying products on a purchase and sale basis.

The Court: That is right. The paper work is always perfect, regardless of the relationship. You have to get behind the paper work to find out what they actually did in all these cases. Otherwise, you might just put the paper before me and have me interpret it, and that would end the case. Overruled. Go ahead and tell the conversation [fol. 1385] with Mr. McCoy.

The Witness: It was when Mr. McCoy checked out of the station. I asked him why, and he said that he just had so

much merchandise, that he didn't have any operating capital, and it was forced on him in this contest.

The Court: All right.

Mr. Somerville: I think that will be all.

The Court: Cross-examine.

Cross examination.

By Mr. Paradise:

Q. Mr. Jones, are you familiar with the difference between the so-called L-O station and a dealer station?

A. I think so.

Q. What is an L-O station, as you understand it?

A. It is one that Richfield holds the master lease on, and a subsequent lease to an operator.

Q. What is a dealer station?

A. Well, they are usually signed on a paint contract, I believe.

Q. Have you ever seen the contract?

A. I believe so.

Q. Do you know whether there is in existence a sales contract with that dealer?

A. I have seen sales contracts, too, yes.

[fol. 1386] Q. The situations that you refer to as dealer stations are not stations in which Richfield either owns or leases?

A. You mean as an independent dealer?

Q. Yes.

A. That is correct.

Q. That is a station which is owned and controlled by the dealer himself?

A. It is controlled by him.

Q. Now, these stations that you mentioned,—Mr. Shaffer's station, was that an L-O station?

A. Yes.

Q. Or an independent station?

A. L-O.

Q. The Shaffer station was an L-O station?

A. That's right.

Q. The other station you mentioned, the one of Mr. Wallie McCoy, that you also had a conversation with, was that an L-O station?

A. That is correct.

Q. That also was an L-O station?

A. Right.

Q. During the time you were a TBA distributor, you sold TBA to both L-O stations and to independent stations?

A. That's right.

Q. Did you also sell TBA to service stations not handling [fol. 1387] any Richfield products at all?

A. Yes.

Q. You made a like effort to sell to all three types of stations?

A. That's right.

Q. You mentioned conversations with merchandisers. What were the names of those merchandisers again?

A. Well, Mr. Weir, Mr. Zimmerman, Mr. Hagins.

Q. Do you know the duties and functions of a merchandiser? Has that been explained to you?

A. I believe so.

Q. It is correct, is it not, Mr. Jones, that the merchandisers have connection with and have contact only with Richfield L-O stations?

A. That is my belief.

Q. And that they have no connection whatsoever with any so-called independent stations, that we have referred to?

A. That's right.

Q. So that all your conversations with these merchandisers related only to Richfield L-O stations?

A. With the merchandisers, that's right.

Mr. Paradise: That is all.

[fol. 1388] Redirect examination.

By Mr. Somerville:

Q. Mr. Jones, in the area which you serviced, did you at any time observe any service stations handling Richfield gasoline, handling any gasoline except on a 100 per cent basis?

Mr. Paradise: I object to that as improper redirect examination.

The Court: I will allow him to ask that. Overruled.

These witnesses are not available, and rather than call them back later on, where there is a question, I will allow it.

The Witness: What was the question?

(The question was read.)

The Witness: Not on gasoline.

By Mr. Somerville:

Q. What percentage of accounts other than those handling Richfield gasoline did you sell TBA to?

A. Well, I would guess 20, 25 per cent.

Q. Did you ever sell TBA to a Chevron station?

A. Yes.

Q. And you have sold TBA to a 3-C station?

A. That's right.

Q. And stations operating under a paint contract?

A. That's right.

Q. And a sales contract?

[fol. 1389] A. That's right.

Mr. Somerville: That is all.

The Court: Anything further, Mr. DeMartini?

Mr. DeMartini: No, sir.

The Court: Or Mr. Paradise?

Mr. Paradise: No, sir.

The Court: All right, sir. You may go about your business.

(Witness excused.)

The Court: Call your next witness.

Mr. Somerville: The government calls as its next witness Mr. Minor.

Wayne Minor, called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination

The Clerk: Will you state your name, please?

The Witness: Wayne Minor.

The Clerk: Wayne Minor, —M-i-n-o-r?

The Witness: Right.

By Mr. Somerville:

Q. What was the name, sir?

A. Wayne Minor.

[fol. 1390] Q. Where do you reside?

A. Fresno.

Q. Calling your attention, Mr. Minor, to the year 1949, about September, what business or employment were you in at that time?

A. At what time?

Q. September, 1949.

A. I was with Richfield Oil Corporation.

Q. In what capacity were you employed with Richfield Oil Corporation?

A. As merchandiser.

Q. As merchandiser did your duties include supervision of service stations handling Richfield gasoline?

A. Yes, sir.

Q. What was the area in which those service stations were located?

A. Well, pretty much the entire area of the Central Division.

Q. Would you speak a little louder, please?

A. Pretty much the entire area of the Central Division.

Q. What is the Central Division?

A. I don't know the exact lines, but it is Fresno, and that area, the San Joaquin Valley, and to the coastal cities.

Q. Did you have supervision of service stations in the [fol. 1391] Sacramento area?

A. Yes.

Q. In the course of your duties, did you have anything to do with installing a new dealer in a service station?

A. Yes, I did.

Q. How many dealers would you say you installed during this period?

A. Oh, it would be difficult to hazard a guess.

Q. Quite a number, at any rate?

A. Quite a few, yes.

Q. At the time that a new dealer enters into a Richfield station, is anything said concerning what is expected of him with respect to petroleum products?

A. Oh, yes.

Q. The purchase and sale of petroleum products?

A. Yes, sir.

Q. What is said, or, what was said by you?

A. Well, he was told that he was expected to sell Richfield petroleum products.

Q. Was he also told he was expected to sell them on a 100 per cent basis?

A. Yes.

Q. With respect to an incoming operator, does the operator purchase the inventory of the outgoing operator?

A. Yes.

[fol. 1392] Q. That is, he makes an investment in the station?

A. That's right.

Mr. Paradise: What was that question?

By Mr. Somerville:

Q. Normally, what is the investment that the operator has in the station?

Mr. Paradise: That calls for the conclusion of the witness. I think we are entitled to the facts.

By Mr. Somerville:

Q. From your experience?

The Court: I think that calls for a fact. It calls for a round figure.

The Witness: The amount of value of an inventory on a dealer change would vary, oh, I would say, from $1,000 on up to $3,000 or perhaps $3500.

By Mr. Somerville:

Q. In the course of instructing a new dealer, have you said anything to any of those dealers that you have installed concerning the matter of including in their inventory at some future date competitive products for sale to any new operator, in the event he sells out?

A. Do you mean in the interview of a prospective new dealer?

Q. Well, let me break that down and make it a little simpler. At the time you install a new dealer, you usually

have an older dealer going out with some merchandise and a new dealer coming in?

A. That's right.

[fol. 1393] Q. Does the old dealer—is he required to sell his stock to the new dealer?

A. He is asked to, yes, sir.

Q. Do you include on the inventory, or, do you supervise that inventory?

A. Well, I assisted with the inventory, yes.

Q. Do you permit any products which are directly competitive, that is, a comparable item to any product either sold by Richfield or approved by Richfield, to be included on that inventory?

A. I have, yes.

Q. Have you instructed the new dealer, or have you had any conversation with the new dealer in installing him concerning whether or not he would be permitted to handle or sell competitive products to any new operator taking over the station at a subsequent date?

A. He was told that if he had any unapproved merchandise, that we could not assist him with placing a value on it, that he and the incoming dealer would have to work out their own deal, that we couldn't help them to place a value on this merchandise.

Q. What was the situation with respect to the approved merchandise?

A. Then, of course, we had price sheets, and we could help with placing a value on the merchandise.

[fol. 1394] Mr. Paradise: What was your answer? We can't hear over here.

The Court: Read the answer.

(The answer was read.)

By Mr. Somerville:

Q. Was the incoming operator free to accept or reject the approved items that the old operator had?

A. No, he was asked to take the approved merchandise.

Q. Subsequent to installing a dealer in a station, Mr. Minor, did you have any supervision over the stations? Did you make any periodic calls on them?

A. Oh, yes.

Q. In the course of calling on the dealers at these stations, would you observe whether competitive or non-approved items were in stock?

A. Yes, sir.

Q. Would you on any occasion call to the attention of the operator the fact that non-approved items were in stock?

A. Yes, sir.

The Court: What did you do about it? Tell us what you said to him.

The Witness: I would usually call it to his attention and try to point out where it would be to his advantage not to stock different merchandise at times.

[fol. 1395] By Mr. Somerville:

Q. Did you ever on any occasion require the dealer or request the dealer to dispose of competitive items?

A. I have asked him to try and sell it, to get his money out of the stock.

Q. And to replace it with approved items?

A. Yes.

Q. Now, who was your superior, in your capacity as merchandiser?

A. In Sacramento?

Q. Who was your boss?

A. In Sacramento?

Q. In Sacramento, yes.

A. That was Mr. J. F. Holland.

Q. Calling your attention to a service station at 57th and H,——

A. Yes.

Q. Do you recall that particular station?

A. Yes.

Q. Is that one handling Richfield gasoline?

A. That's right.

Q. Who was the operator there during December of 1949, or around in that period?

A. It was a Mr. Jennings.

Q. At any time have you had any conversation with Mr. [fol. 1396] Holland concerning competitive items at this station?

A. Only batteries, I believe.

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Q. With whom was that conversation?
A. With Mr. Holland.
Q. What was the conversation?
A. He called my attention to the fact that Mr. Jennings had some competitive batteries in the station.
Q. Did he instruct you to do anything about it?
A. He asked me to check on the matter.
Q. Did you check on the matter?
A. Yes.
Q. In your instructions from Mr. Holland was there anything ever said during the course of your employment with respect to Richfield's policy with respect to service stations handling Richfield's lubricating oils or outside competitive lubricating oils?
A. Yes, there was conversations along those lines.
Q. Who were those conversations with?
A. Mr. Holland.
Q. In those conversations what was explained as the policy of Richfield with respect to the handling of outside oils in service stations?

Mr. Paradise: Will you fix the time of these conversations, please?

By Mr. Somerville:

Q. Would you fix the time of this particular conversa-
[fol. 1397] tion, Mr. Minor, or can you fix it?
A. No, I can't recall the time.
The Court: It was in 1949, wasn't it?
The Witness: Yes, it was in the year of '49.
The Court: All right.

By Mr. Somerville:

Q. Did it occur more than once?
A. Oh, we had occasional pep talks, not about any particular product.
Q. What was the policy that was formulated or laid down to you?
A. They weren't in favor of it.
Q. Pardon?
A. They weren't in favor of it. My instructions were, if I may make a statement, to ask the dealers on some occa-

sions where they felt it was necessary to have a competitive oil, and my instructions were to ask them not to display it.

Q. Did you also interview prospective dealers of service stations?

A. Yes, sir.

Q. In the course of interviewing them, did you ever discuss the contents of the agreements that they would enter into?

A. That's right.

Q. Are you familiar with the form of lease agreement which Richfield has at their leased out stations?

[fol. 1398] A. I know what it looks like, but I have never read one.

Q. Do you know what provision it has for termination?

A. I—no.

Q. ——on a leased out station?

A. Not—I know there is a 24-hour termination clause.

Q. In the course of your interviews with prospects, was the 24-hour cancellation clause a part of the conversations?

A. Yes, sir.

Q. What would the dealer usually say?

A. Oh, ordinarily there was some comment, but it was explained to the dealer it was to his benefit, as well as our own.

Q. Normally, I am speaking—I am trying to establish whether or not there was any normal pattern here. Was it usual for a prospective dealer to inquire about the 24-hour clause?

A. There was never very much comment, because at the time I was a merchandiser for Richfield it was an established fact, I believe, that most service station contracts held that clause.

Mr. Paradise: I can't hear your answer.

The Court: Read the answer.

[fol. 1399] Mr. Paradise: It was an established fact——

(The balance of the answer was read.)

Mr. Paradise: I move that be stricken as the conclusion of the witness. May I move the last part of the witness' answer be stricken?

The Court: Well, unless you have seen them all, you are not in a position to tell us.

The Witness: I haven't seen all of them.
The Court: Do you know how many had that clause?
The Witness: No, sir.
The Court: All right.
Mr. Somerville: I think that will be all.
The Court: Cross-examine.
Mr. Paradise: Do you want the cross examination now, your Honor?
The Court: Yes. I didn't take a recess, to make up for my delay in getting on the bench. Of course, you gentlemen understand that I have other work to do. I have drawn quite a number of difficult problems on my Monday law and motion days, and I cannot freeze my other cases, so I have to work in between. I was in the middle of dictation this morning, and you know yourself how difficult it is to be interrupted. But we will make up for it this afternoon. Go ahead.

[fol. 1400] Cross examination.

By Mr. Paradise:

Q. Mr. Minor, when did you become a merchandiser?
A. In June of 1948.
Q. I can't hear you.
A. June of 1948. I am sorry.
Q. What were your duties as merchandiser?
A. My first duties as merchandiser was in the truck station department, assisting the dealers in getting orientated in the truck station, and in the general operation, in assisting him, I might say, in the truck station.
Q. Whom were you assisting?
A. The dealer.
Q. The dealer in a truck station?
A. Right.
Q. You were learning the operation of the station; is that right?
A. I was attempting to teach the dealer.
Q. Oh, you were teaching the dealer?
A. Right.
Q. And that was one of Richfield's truck stations; is that correct?
A. Yes.

Q. A station which Richfield owned?

A. That's right.

[fol. 1401] Q. Now, subsequent to that, what were your duties? How long were you in that truck station?

A. I was in the truck station department from June of 1948 until September of 1949, and then I was transferred to Sacramento, and my duties were branch merchandiser.

Q. From September of 1949 until when?

A. Until June of 1950.

Q. Now, during the period when you were a branch merchandiser in Sacramento, what were your duties as a branch merchandiser?

A. Basically the same as the duties in the truck station department, assisting the dealer, and general merchandising. I wore a uniform most of the time, and worked right in the station with the dealers.

Q. You received a salary from Richfield, did you?

A. Yes, sir.

Q. In either capacity, first, in the truck merchandising department, or subsequently as a branch merchandiser, you had nothing to do, did you, with either the 337 dealer accounts or the 3-C dealer accounts?

A. No, sir.

Q. Am I correct?

A. You are right.

Q. Are you familiar with those types of service stations?

A. No, sir.

[fol. 1402] Mr. Paradise: I am sorry, I can't hear you.

The Court: He said, "No, sir."

The Witness: No.

By Mr. Paradise:

Q. Those are not stations which Richfield owns or controls; is that correct?

A. That's correct.

Q. What instructions did you receive concerning your duties as merchandiser, and from whom?

A. I received instructions from the branch manager, who was Mr. Holland, to——

Q. That was when you first went to Sacramento?

A. Yes.

Q. Were those instructions oral or written?

A. Oral.

Q. What were those instructions?

A. To work with the stations in an attempt to sell more Richfield merchandise.

Q. Now, when you speak of these stations and the dealers, am I correct in assuming that you are speaking only of Richfield L-O stations?

A. Only.

Q. And only of the personnel operating Richfield L-O stations?

A. That is correct.

Q. And the testimony that you gave in answer to Mr. [fol. 1403] Somerville's questions had no relation whatsoever, as I understood it, to any 337 stations, or any 3-C stations, or to any of the dealers or operators in those stations?

A. That is correct.

Q. Now, as a part of your duties, did you interview prospective applicants or prospective operators for Richfield L-O stations?

A. Yes, sir.

Q. How did you come in contact with those people?

A. Through advertising and by personal solicitation.

Q. Did any of them come into the branch office and ask if any Richfield L-O stations were available?

A. Quite frequently.

Q. And you talked to them?

A. That's right.

Q. What were the matters that were discussed during these interviews?

A. Oh, Richfield products were discussed, and his advantages in being in a Richfield station, and cleanliness, and maintenance of the station was discussed.

Q. Before you discussed any of the details of the operation of the station, were you concerned with what sort of a person this particular applicant was?

A. That is true.

Mr. Somerville: I will object to that line of questions. [fol. 1404] It has no materiality here.

The Court: Overruled.

Mr. Somerville: And it is not within the scope of the direct examination.

The Court: Overruled. I am saying the same thing as before. If they want to draw some defensive matter out of the witness, I am not going to stop them, because these witnesses are not employees of the company now, not connected with the company, and we don't want to have to call them back for a few questions. Go ahead.

Mr. Paradise: What was the last question, please?

(The question and answer were read.)

By Mr. Paradise:

Q. What factors were you interested in, Mr. Minor?

A. The gentleman's character, and whether or not he had sufficient capital to operate a service station, and whether or not he could sell.

Q. Were you interested in his personal habits?

A. Yes, sir.

Q. For what reason?

A. Well, that lends to character, I believe.

Q. Were you interested in his family?

A. Yes.

Q. Or his reputation in the community?

A. That's right.

[fol. 1405] Q. Did you discuss those things with him?

A. Yes, sir.

Q. Now, what was told to this man—and when I say "this man," I would like to have you take a typical situation, and then tell me if that provided a pattern for your discussions with other applicants and other people with whom you had discussions as prospective operators for Richfield stations. What was told to this man as to the method or manner by which he would be permitted to operate a Richfield station?

A. That could take in quite a scope.

Q. Well, in your own words, supposing you tell us just about what you would tell a prospective operator, under these circumstances.

A. Well, he was told——

Q. And what you did tell him?

A. He was told that he was expected to keep the service

station clean, he was to keep it adequately stocked, and we requested him to operate sufficient hours to get his share of the business. What I mean by sufficient hours is an average of the hours of competitive stations in the area. He would be asked to stay open as long as the competition.

Q. You told him what hours to keep open, then?

A. He was to base that on the hours of operation of other stations in the area.

[fol. 1406] Q. Was anything told to him concerning the wearing of uniforms?

A. Yes, sir.

Q. What was told to him in that regard?

A. He was asked to wear a Richfield uniform.

Q. Was anything told to him concerning the display of signs on the station?

A. Yes, sir.

Q. What was told in that regard?

A. He was told not to post too many signs and, in fact, he was not to post signs in the windows other than the regular advertising material that went in the window occasionally. And I can't remember any particular instance other than window signs, that came to my attention.

Q. Was he told anything with respect to the service he should perform at the station and the manner of dealing with the members of the motoring public who came in to buy petroleum products?

A. He was to use the facilities at his disposal.

Q. Was he told anything about—I think you mentioned that you did discuss with him the term of the written lease that he was asked to sign if he wanted to operate the station, is that correct?

A. That is right.

Q. Mr. Minor, I show you a document which is called [fol. 1407] "Richfield Oil Corporation Service Station Lease." It is Government's Exhibit 1-G and bears a print date of, I think it is January 1949, and ask you if that is the instrument that you discussed with these prospective applicants?

A. Yes, sir; that is the lease.

Q. What did the discussion consist of concerning this form of lease, what matters were covered?

A. Well, the rental was usually covered first, because it was one of the first questions, and the term of lease was discussed.

Q. The term, by "term" you refer to this matter of the right of either Richfield or the operator to terminate it on 24 hours notice?

A. That is right.

Q. What statement did you make to this prospective operator in connection with that 24-hour clause?

A. He was told that if he didn't operate the station in a clean manner or if the station was being damaged recklessly, that he could be terminated.

Q. Isn't it correct that you told him that this 24-hour clause was for the purpose of Richfield's maintaining control over that station, and that if he did not operate the station in the manner in which Richfield—and probably through the merchandising department—told him to, that that 24-hour clause might be used for the purpose of evicting him?

[fol. 1408] A. That is right.

Q. Will you turn, Mr. Minor, to Schedule A that is attached to that form? Is there a schedule of several sheets attached to that form?

A. No, there isn't.

Mr. Paradise: Your Honor, at the opening of the trial Mr. Dixon left with the clerk as custodian a stipulation bearing this title: "STIPULATION RE INTRODUCTION OF CERTAIN EVIDENCE," (Paragraph 1 of Plaintiff's Subpoena dated February 7, 1951). May I ask that that be filed now, because we would like to refer to one of the instruments that is attached to it?

The Court: All right.

Mr. Dixon: Is counsel making this part of his case, Judge? I just want the record to be clear that if he is now——

The Court: Oh, no. We will give it a letter for identification and then he can take any document from it and offer it into evidence by designation. We will follow that method the same as we do with other bulky documents.

Mr. Dixon: I understand, Judge. The reason for my question was your Honor's ruling, and quite obviously——

The Court: Before, it was lodged, but I think we ought to begin now by taking the documents in. Evidently he has a document there which is not in the record, which he wants this witness to examine.

[fol. 1409] Mr. Dixon: That is my point, your Honor, that this cross examination obviously has gone way beyond the scope of the direct examination.

The Court: Naturally, it may be.

Mr. Dixon: And that he is actually his witness now.

The Court: That is permissible. That is all right. I am going to allow it in the case of these witnesses to a limited extent. I do not want a lopsided case. I remember once I got into a case tried by another judge who was taken ill, though not in this District, and I found that he had allowed nearly 200 exhibits to be brought in under the guise of cross examination. When it came to the defense, there was not any defense left. They had presented it all in that manner. That is a lopsided way. But, to a limited extent, I am going to allow this examination. At the present time let us give them a number or a letter. What is your next exhibit? What is your next exhibit for the defense?

Mr. Paradise: This will be the first defendant's exhibit.

The Court: The first one. Call it Defendant's Exhibit A for identification. That puts it in our custody, you see, and then you take from it what you want.

(The document referred to was marked Defendant's Exhibit A for identification.)

Mr. Paradise: I would like to have the stipulation itself, without the attachments to the stipulation, copied into the [fol. 1410] record, and then I use the particular instruments and offer those separately if I may, your Honor. I only expect to offer one instrument that is attached.

The Court: You want to offer the stipulation as a part of your case now? You see, the way we handle it, if you want the stipulation copied into the record, I will order it copied even though it is a part of an exhibit for identification.

Mr. Paradise: It was my understanding that a stipulation between counsel was not a matter to be offered into

evidence. I thought it was merely a part of the proceedings, but whatever your Honor's procedure is.

The Court: No. A stipulation, if it occurs at the trial, we give it an exhibit number, you see.

Mr. Paradise: I see. Then under those circumstances I would like to have the stipulation itself offered as Defendant's Exhibit 1 in evidence.

The Court: No. We will call that "A." Shall we call it "A-1" or shall we call it "B"?

The Clerk: It would be better to call it "B."

The Court: What?

The Clerk: "B" I think would be better.

The Court: All right. Then the whole exhibit is A for identification. Then we are beginning to take from it what is to go in. What we are taking from it is the stipulation which counsel is offering, the stipulation without the ex-
[fol. 1411] hibits, and that stipulation will be marked as Defendant's Exhibit B. Now, we have the record straight.

(The document referred to was marked Defendant's Exhibit B for identification.)

Mr. Paradise: Thank you, your Honor.

The Court: If this examination is going to be very lengthy, I think we had better take a recess now.

Mr. Paradise: Perhaps that would be best, your Honor. It will be somewhat lengthy.

The Court: All right. Then we had better take the recess until 2:00 o'clock.

(Whereupon a recess was taken until 2:00 p.m. of the same day, Thursday, May 10, 1951.)

[fol. 1412] Thursday, May 10, 1951. 2:00 p. m.

Mr. Paradise: Mr. Minor, will you resume the stand?

The Court: All right, Mr. Minor.

Wayne Minor (Recalled.)

Cross examination (Resumed.)

By Mr. Paradise:

Your Honor, I checked with the reporter during the noon hour and I think the present state of the record is that this

stipulation, together with Exhibits, is marked as Defendant's Exhibit A for identification, and that the stipulation alone is marked as Defendant's Exhibit B for identification.

The Court: That is right.

Mr. Paradise: I would like to offer into evidence Defendant's Exhibit A for identification.

Mr. Dixon: If the court please, the Government objects to the introduction of the stipulation into evidence, principally because an examination of this exhibit will show that it covers a multitude of other exhibits and no part of which are part of the Government's case. And we feel it is highly improper at this time for the defendant to offer as part of something which is obviously part of his case, something which comes out merely upon the cross examination of one of the Government's witnesses, and a very small part of this [fol. 1413] stipulation, namely only three documents, and the stipulation, your Honor will note, contains about 30 documents, relate at all to the matter. And we think that it is no part of the record insofar as the Government's case is concerned.

The Court: The stipulation merely relates to certain stated facts, and if they leave it as part of their case they may be lost on cross examination. As I said before, I am not going to have this case tried in a lopsided manner, but I can see no objection to allowing the stipulation in at the present time and I then will determine later which of the exhibits may go in. If counsel should go too far beyond the direct examination of this witness, I am going to stop him and have him call him back.

Mr. Dixon: Pardon, your Honor.

The Court: Yes.

Mr. Dixon: May I direct your Honor's attention to the contents of the stipulation, if you haven't seen it?

The Court: I saw it when it was first offered.

Mr. Dixon: I might say that the only document which I understand counsel wants to examine this witness with reference to is forms 542-A, -B, and -C, which are a part of the Government's—that is, the appendix.

The Court: I have seen them. The objection is overruled. Let us go on. All right, let us go on.

[fol. 1414] Mr. Dixon: May I just have one other word, your Honor?

The Court: Yes.

Mr. Dixon: May the record show the Government objects to this exhibit being made a part of the Government's case in chief?

The Court: It is not made a part of the Government's case in chief. You overlook the fact that a defendant has a right to introduce a part of his case through cross examination.

Mr. Dixon: That is correct.

The Court: Supposing you should fall down on your order of proof and they should decide to rely upon the weakness of your own case and upon the interpretation on the evidence. They have a right to do so. You don't have to put them to the proof.

Mr. Dixon: We understand that, your Honor.

The Court: All right.

Mr. Paradise: One further matter, your Honor: The clerk informs me that he understood your Honor's order to admit Exhibit B in evidence. It was Exhibit A that I had offered, the entire stipulation.

The Court: Yes, all right.

(The document referred to was marked Defendant's Exhibit A and received in evidence.)

By Mr. Paradise:

Q. Mr. Minor, I call to your attention four blue pages which are attached to Defendant's Exhibit A and marked respectively Forms 542-A, -B, -C, and -D, and ask you if [fol. 1415] you are familiar with these documents and whether you have used them?

A. Yes, I have used them.

Mr. Paradise: I have a copy of such instruments for the court's use in case you want to follow the examination.

The Court: All right.

By Mr. Paradise:

Q. What use and for what purpose are these documents put, Mr. Minor?

A. Those are used in changing over from one dealer to another, where one dealer buys out another dealer, in de-

termining whether or not the merchandise owned—or not merchandise, but equipment owned by the company is intact, and it is made a part of the lease the new dealer has made and is held responsible for.

Q. This is used as an exhibit and a schedule to the 542-Form that the new L-O dealer signs when he is installed, is that correct?

A. That is correct.

Q. What is the nature of the equipment that is listed in these schedules? Who owns this equipment?

A. That is company-owned equipment.

Mr. Somerville: If your Honor please, I object to that question. It calls for a conclusion of the witness, also——

The Court: Well, overruled.

By Mr. Paradise:

Q. Is this equipment installed in the service station at [fol. 1416] the time this lease is signed?

A. That is correct.

Q. It is presently in existence?

A. That is correct.

Q. At the time of your discussion with this applicant for an L-O station is there discussion of the amount and nature of Richfield property?

A. That is right.

Mr. Somerville: Well, I think that that, counsel, is going far beyond the scope of the direct examination.

The Court: Yes, I will sustain the objection. I want to limit this cross examination to such things which this man may have discussed with the particular man, but not to go to his entire knowledge. You will have to bring him back as your own witness if you want to do that.

Mr. Paradise: I thought, if the court please, that this was along the same line as the counsel's examination this morning.

The Court: No, it is not, I am sorry to say.

By Mr. Paradise:

Q. Mr. Minor, you testified this morning to an investment of the L-O operator which is discussed with him at

the time he makes an application for a station, is that correct?

A. That is correct.

Q. What is the amount of the investment you mentioned?

[fol. 1417] A. I believe I said that the investment varies.

The Court: From one to three thousand, didn't you?

The Witness: That is right.

The Court: The value of his inventory.

[fol. 1418] By Mr. Paradise:

Q. Now, was there discussion between you and the applicant of this station as to what that $1,000 to $3,000 represents, and what it was to be used for?

A. Yes.

Q. Will you please state what you said in that regard?

A. The investment is determined by the amount of resale merchandise, and such small equipment as is necessary for the operation of this service station.

Q. Do I understand this one to three thousand to represent petroleum products plus equipment?

A. Plus equipment owned by the former dealer, that's right.

Q. What is the nature of that equipment you were talking about?

A. Small tools, battery chargers, and lubrication equipment.

Q. Those are all items of movable equipment?

A. That's right.

Q. Have you installed operators or L-O dealers who have been applicants?

A. Yes.

Q. What have you done in connection with your installation of them? Perhaps that question isn't clear. Have you informed them at the time of the installation of the manner in which Richfield expected them to operate the [fol. 1419] station?

A. Yes, sir.

Q. Will you state what you tell them in that regard?

A. I told the dealers that they were supposed to operate the station in a clean and orderly manner, and that they were to wear a uniform, and it was recommended that they

stay open, they operate enough hours to get the maximum business.

Q. Did you spend then any time with them at the time they were installed?

A. Yes.

Q. How long?

A. That time varies. Perhaps one day, perhaps three or four days.

Q. What causes the variance between the time?

A. A few dealers have had a lot of service station experience, where others haven't.

Mr. Paradise: For purposes of identification in the record, your Honor, attached to this stipulation, which is Defendant's Exhibit A, are several sections. Section 1-A is an index of certain forms, giving on the left side the form number, and on the right side the form title. I am going to call the witness' attention to the last six forms in that schedule.

The Court: All right.

[fol. 1420] Mr. Paradise: Do you have copies of that, Mr. Dixon?

Mr. Dixon: Yes.

By Mr. Paradise:

Q. Mr. Minor, I show you these six forms, the first one of which is entitled "Richfield Oil Corporation Dealer Franchise Application," and then follows five other forms, some mimeographed and one printed, and I will ask you if you have used any of those in connection with your interviewing of prospective applicants for Richfield L-O stations?

Mr. Somerville: We will object to that. Counsel is obviously going into the defense here, and not limiting the examination to the scope of the direct, which was concerned with the products sold, and relating to the instructions given to the dealers with respect to the merchandise they should handle.

Mr. Paradise: This is a matter counsel went into this morning, as to the original discussion with the applicants.

Mr. Somerville: That testimony was with respect to the arrangements, the total arrangements between the dealers and Richfield.

The Court: Of course, he did not limit himself to discussions he had as to products. He spoke of general discussions he had as to the manner of the conduct of the business and the violation of any such which might result in the cancellation of the arrangement. So it may well be that you [fol. 1421] wanted to bring out only certain things, but, of course, it is a part of the conversation, and he is entitled to all of it, no matter where it may lead. Overruled.

The Witness: I used on occasion the mimeographed form of the Application for Employment, and also on occasion the printed copy, the printed form of the Application for Employment, merely to obtain information.

By Mr. Paradise:

Q. Those particular forms are the fifth and sixth, or the last two forms in that category which is before Section 1-B in the stipulation; is that correct?

A. That is right.

Q. In using those forms, the information that you included on those forms is the same information that you mentioned this morning, matters with respect to his character, and references, and past employment, and so on?

A. That is correct.

Q. Following the installation of this man in the station, Mr. Minor, did you thereafter visit the station on occasion?

A. Yes.

Q. I think that in answer to Mr. Somerville's question, you stated that on visits of that nature you observed whether or not competitive TBA was located at the station?

A. That's right.

Q. Did you also attempt to observe whether competitive [fol. 1422] lube oils or greases were located at the station?

A. Right.

Q. How often would you make those visits?

A. There was no schedule, but each station was visited at least once a week.

Q. How many stations were there in your territory?

A. 13.

Q. 13?

A. Right.

Q. That was in and about Sacramento?

A. The city of Sacramento.

Q. On those occasions would you discuss*ion* with the operator matters concerning the operation of the station?

A. Yes.

Q. I show you, Mr. Minor, a printed form entitled or with the title of "Survey of Service Station Operations," and designated as form No. 205, and ask you to state what that is, if you know.

A. Well, that is a survey of the general operating conditions at a service station.

Mr. Paradise: May I ask that this be marked as Defendant's Exhibit C, for identification?

The Court: All right.

(The document referred to was marked Defendant's Exhibit C, for identification.)

[fol. 1423] Mr. Paradise: I might state that this Defendant's Exhibit C, for identification, is one of the items called for by the government's subpoena duces tecum, item No. 25.

Mr. Dixon: Is it contained in the stipulation, counsel?

Mr. Paradise: The stipulation that was just filed?

Mr. Dixon: Yes.

Mr. Paradise: No. I said this was called for by item No. 25 in the subpoena.

Mr. Dixon: There was a tremendous amount of material called for in the subpoena, your Honor, that we do not intend to burden the record with in this case.

The Court: That is all right.

By Mr. Paradise:

Q. What use have you made of this form, Mr. Minor, in connection with these inspections of the L-O service stations?

A. I have used it as a—you mean, have I prepared it, or——

Q. No, have you used it in any way?

A. I have used it, yes.

Q. On what occasions? I will strike that. Was your use of it made at regular intervals with each L-O station?

A. That is correct.

Q. And at how frequent intervals?

A. Oh, at least once every 60 days.

Q. Will you describe the manner in which it was used?

[fol. 1424] A. It was used as more or less a record of progress in the operation of the station, and also something in writing to point to the dealer where his weaknesses were.

Q. Was this form filled out by you?

A. Yes.

Q. Each of the items that are listed on both columns of the form?

A. That's right.

Q. Will you state what these symbols at the top of the columns represent, "S U C" and "TBC"?

A. "S" signified it was satisfactory. "U" was unsatisfactory. "C", corrected. "TBC" is "To Be Corrected."

Q. Now, was that form filled out by you as you have mentioned every 60 days? Was it filled out by you alone or in the company of the L-O operator?

Mr. Somerville: Your Honor please, I think we will have to object to this line of interrogation.

The Court: Yes. The objection is sustained.

Mr. Paradise: I will offer the exhibit in evidence, if the court please.

Mr. Somerville: We object to the introduction in evidence on the ground it is beyond the scope of the direct.

The Court: It is merely a form they used in evaluating the value of the performance. Overruled.

(The document, heretofore marked Defendant's Exhibit C, for identification, was received in evidence.)

[fol. 1425] Mr. Paradise: No further questions.

The Court: Any redirect?

Mr. Somerville: Yes.

Redirect Examination

By Mr. Somerville:

Q. You testified, Mr. Minor, concerning the investment that is required by the dealer. Now, in addition to that, did you instruct the dealer with respect to the amount of stock that he should maintain at the station?

A. I recommended an inventory, yes.

Q. What products did you recommend that he handle in respect to TBA?

A. Richfield products.

Q. Did you inform him where he should purchase those products?

A. Yes.

Q. Where was that?

A. From the TBA distributor.

Q. And were those products described as authorized products?

A. Yes.

Q. Does the operator or did the operator pay cash for those items?

A. As far as I know.

[fol. 1426] Q. Did he purchase his gasoline and oil for cash?

A. The gasoline and oil were cash, yes.

Q. With respect to the stock of TBA that he should handle, did you recommend any particular amount or any particular items of TBA that he should handle?

A. Yes.

Q. What was the basis of your recommendation, that is, how much would you recommend that particular dealer should handle?

A. Well, it had been determined by my superiors what constituted a balanced inventory, a balanced stock of merchandise.

Q. In the normal situation, how much of an investment was required for a balanced stock of authorized products?

A. I can't remember any specific value.

Q. What determined the amount that he would stock?

A. The general needs, the general sales in a service station.

Q. In your instructions when you were told—did you have any instructions? I believe you did testify that you had instructions concerning this from your superiors?

A. That is correct.

Q. As a part of those instructions were you told that the operator should maintain this balanced stock to carry his burden of the operation?

A. That is correct.

[fol. 1427] Q. Who furnished the uniforms, Mr. Minor, for the dealer, that is, who paid for them?

A. The dealer.

Q. Did you determine or direct the number of hours that the operator should work?

A. Not the hours that he should work, but the hours that the station should remain open.

Q. If that required additional help, who paid for additional help?

A. The dealer did.

Q. The dealer did? And in some instances were stations directed to be open 24 hours?

A. None within my supervision.

Mr. Somerville: May I have Government's Exhibit 1-G?

Mr. Paradise: Which exhibit, Mr. Somerville?

Mr. Somerville: 1-G.

Q. Calling your attention, sir, to the paragraph, to the heading "rent" with the blanks for each month as for a rental to be inserted, in your dealings with the operators was a minimum rental fixed with respect to that portion of the lease?

A. Yes.

Q. There was never any instance where rentals were not fixed in the lease?

A. I don't believe so.

Q. Who determines those rentals?

[fol. 1428] A. My superiors.

Q. Thank you. One more question: Did your supervision include the dealer type station, that is, other than leased out stations?

A. Leased out stations only.

Q. None of your work was concerned with the dealer type of stations?

A. No.

Q. You did not assist them in their sales operations?

A. No.

Mr. Somerville: Thank you.

Mr. Paradise: Had you finished, Mr. Somerville?

Mr. Somerville: Yes.

Recross Examination

By Mr. Paradise:

Q. Mr. Minor, again with respect to that investment of one to three thousand dollars, at the time that was discussed between you and this prospective applicant or these successive applicants was any discussion made at the same time of the amount of Richfield's investment in the property?

A. Yes.

Q. Will you state what was said in that regard?

Mr. Somerville: We will object to that. That goes into the same matter which counsel has attempted to go into before and beyond the scope of the direct.

[fol. 1429] Mr. Paradise: I do not see how counsel can get a part of the conversation in and then exclude the balance of it.

The Court: Let us see if he knows. I doubt if he knows how much Richfield had. Go ahead.

A. Well, I never had any knowledge of the exact amount of——

The Court: No.

A. ——value that was in a property or a station.

The Court: All right.

By Mr. Paradise:

Q. Did you make any statement concerning investment?

The Court: The same thing.

Mr. Paradise: Calling for conversation.

The Court: Go ahead. Conclusion.

Mr. Paradise: I do not believe so, your Honor. I am asking for what he discussed.

The Court: Go ahead.

A. I made no attempt to tell the man what the investment was, but I did infer that there was considerable investment.

The Court: That you had a stake in the investment, I mean Richfield had, isn't that it?

The Witness: Yes.

Mr. Paradise: That is all.

The Court: Go ahead, call your next witness.

Mr. Somerville: The Government wants as its next wit-
[fol. 1430] ness Mr. Radke.

Gustav Daniel Radke, called as a witness by the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: Will you state your name, please?

The Witness: Gustav Daniel Radke.

Direct Examination

By Mr. Somerville:

Q. Would state your name for the court, sir?

A. Gustav Daniel Radke.

Q. Where do you reside, Mr. Radke?

A. Portland, Oregon.

Q. And at the present time what is your occupation or business?

A. Motel owner.

Q. Have you at any time operated a Richfield service station?

A. Yes.

Q. Would you tell the court the approximate period of time that you were operating the station?

A. From October 1st, 1943 to October 31st, 1948.

Q. Mr. Radke, you are familiar with the type of arrangement you had with Richfield. Did you have a written agreement with Richfield?

A. Yes.

[fol. 1431] Q. Was that a lease agreement?

A. Yes.

Mr. Somerville: Would counsel stipulate that this particular station during this period was a leased out station?

Mr. DeMartini: Yes, sir. So stipulated.

By Mr. Somerville:

Q. Mr. Radke, I hand you a lease agreement dated October 1, 1943, between Richfield Oil Corporation as lessor and

Gustav D. Radke as lessee, which is on printed form 542, print date 9-41, and which, for the record, is Government's Exhibit 1-D, and I ask you, Mr. Radke, is that the agreement that you executed with Richfield?

A. Yes.

Q. And I show you a form, the same form 542 with the exception of the print date which is June 1943, and dated November 30, 1944, between you and Richfield. Is that document also a lease that you had with Richfield?

A. Yes, it is.

Q. You are familiar with the terms of this lease, aren't you?

A. Yes.

Q. Is there anything, to your knowledge, in these leases concerning purchase and sale of gasoline or any products?

A. Well, particularly I was aware of the fact that I was expected to buy petroleum products chiefly and exclusively. [fol. 1432] Q. Let us establish this with reference to time and place and parties present. If you will permit me, Mr. Radke, I will ask you a few questions here without reference to the lease. When you took over the station were there any verbal instructions or conversations with any representative of Richfield Oil Corporation concerning the purchase and sale and handling of any products?

A. Yes, the merchandiser.

Q. And who was the merchandiser?

A. A Mr. Fred Heikel.

Q. Mr. Heikel came to you, I presume, at the time that you entered into the station?

A. Yes.

Q. And he turned over the premises to you, did he?

A. Yes.

Q. With respect to petroleum products what was said, if anything, with respect to what was required of you in the operation of that station on the purchase and sale of petroleum products?

A. Well, perhaps nothing in particular, only in general it was explained that we were to handle our oils, our gasolines and greases were——

Mr. DeMartini: Will you speak louder, Mr. Radke, please?

The Witness: Sir?

Mr. DeMartini: Will you speak louder, please?

[fol. 1433] A. That we were given to understand, or I was given to understand that I was expected to buy gasolines and oils and greases exclusively from Richfield.

By Mr. Somerville:

Q. Was it a part of that understanding that you buy all of your gasoline, oils and greases from Richfield?

A. Yes.

Q. And you accepted and agreed to that?

A. I did.

Q. And at that time was Richfield in the business of supplying TBA products?

A. Perhaps I should say in a limited way, because of the shortage of commodities on the market.

Q. Now, at any time—not with strict regard to the time that you were installed in the station—but at any time thereafter did any Richfield representatives approach you with respect to a TBA program or any understanding with respect to the handling or the sale or the purchasing of TBA or automotive accessories? What we mean by TBA, you understand that?

A. Yes. Yes, a Mr. Parish and a Mr. Lelland I remember specifically.

Q. Who were those gentlemen, Mr. Radke?

A. Well, they were subsequently—subsequent to Mr. Heikel's time they were the merchandisers.

[fol. 1434] Q. How long after you were installed in the station did these men approach you with respect to any TBA program?

A. Well, I should perhaps say it might have been a year and a half after I was installed there in that station that they spoke to me about that.

Q. And at that time what did they explain to you or tell you about any TBA program sponsored by Richfield?

A. Well, they explained that Richfield Oil Company had a hookup, a TBA hookup with the Goodyear Company and that they were to go into the merchandising of tires, batteries and accessories in an extensive way, and that we were expected to cooperate.

Q. And by "expected to cooperate" what did they mean by that? Will you elaborate?

Mr. Paradise: I object to the question.
The Court: Overruled:

A. As to what they expected, we understood, of course, or I understood that it was natural that when they entered into a proposition like that and presented it to us, it was just on the same—on a par with the other, for instance, petroleum products, that we were expected to sell.

By Mr. Somerville:

Q. Were you told where you should buy these products?
A. Yes.
Q. Where was that, Mr. Radke?
A. Well, it so happens that my own brother was ap- [fol. 1435] pointed the TBA distributor there and I was to —and naturally I would, anyway—buy from him.
Q. Were these products described as authorized products?
A. Yes.
Q. Subsequently, after these original instructions or understandings that you have described, was there any further attempt or was there any further supervision of your station or any supervision of the station, I should say, concerning what you were handling?
A. Yes. The merchandisers, of course, were in and out there and kept a sort of a close eye on what we had, or what I had, and pointed out at times that we better sell out what we had and not get any more of that.
Q. Who was the merchandiser that would tell you that sort of thing?
A. Well, I think I mentioned Mr. Parish that I remember distinctly, and Mr. Lelland, who were very scrupulous in that way, that is, they were on the job.
Q. One thing I neglected to bring out here, Mr. Radke. Where was your station located?
A. At 1205 Northeast Sandy Boulevard, Portland.
Q. Was there anything particular about the location of that station with relation to other stations that demanded any extra supervision?

Mr. DeMartini: I object to that as vague and ambiguous, [fol. 1436] your Honor.

Mr. Somerville: I withdraw the question. It might confuse the witness.

Q. Do you have any knowledge of any meetings of merchandisers or other officials concerning the TBA program or the matter of what the service stations should handle?

A. Yes. I was in an exceptional, you might say, predicament or position there. It just so happened that Richfield Oil Company had the merchandisers' sales force meet, not in the same office, but under the same roof in another room as my station was and, of course, the merchandisers met there every morning and oftentimes prospective applicants and other operators would come there to interview the merchandisers, and it was contended that it didn't look good for me to handle other merchandise.

Q. At any time did you handle any non-approved items? When I speak of "non-approved" I speak in the sense of a competitive item which is similar to a particular item approved by Richfield. For example, a Champion spark plug, an equivalent item would be an A-C spark plug. On items like that which were directly competitive did you in some instances handle any outside products?

A. Yes, I did.

Q. Can you mention any particular instance in which you did?

[fol. 1437] A. I handled seat covers that were competitive in quite a large way, and oil filters and, to some extent, spark plugs.

Q. Were these seat covers included in the approved category of Richfield during the time you purchased them?

A. No. They had no seat cover supply, that is, sufficient to supply the dealers, and I went out and bought them where I could.

Q. And subsequently did they get a supply of seat covers?

A. Yes.

Q. Which were approved?

A. Yes.

Q. With respect to these items did it ever occur a situation in which your attention was called by Richfield representatives to the fact that you were handling them?

A. Yes.

Q. When did that occur?

A. Well, of course as to day and date, I couldn't say, but it did happen, and repeatedly, as I said before, it was pointed out to me that I ought to get rid of them and handle nothing but Goodyear seat covers.

Q. Were the competitive oil filters or competitive seat covers comparable to the items supplied by Richfield?

A. Well, they may have been comparable, but I didn't [fol. 1438] have a wide enough selection to supply my trade.

Q. In other words, did you have a demand for these items?

A. Yes, yes.

Q. Calling your attention now to the matter of competitive lubricating oils, did you ever handle any competitive oils?

A. Yes.

Q. What did you handle?

A. I handled Pennzoil and Quaker State.

Q. Did you ever have any difficulty with respect to handling those products?

A. Yes. I had the embarrassing occasion at times of having had it unloaded there when I didn't have time to put it away out of sight.

Q. What would happen when that occurred?

A. Oh, I would probably be told that "You better not do that again," and "Better put it out of sight," or something like that.

Q. Thereafter did you permit that situation to happen again?

A. And I still kept getting it, but I was a little more careful about how I displayed it.

[fol. 1439] Q. You did keep it away?

A. I kept it hid all the time.

Q. By the way, did you have one of those Pennzoil or Quaker State signs out in front of your station?

A. No, I never did have.

Q. Did you have many calls for this outside oil?

A. Yes, quite a bit.

Q. Let's go to the end of your tenure. It did end, didn't it?

A. Yes.

Q. At the time you sold out, did you have a considerable amount of merchandise available?

A. Yes, I had around $2100 worth of merchandise.

Q. What was your investment, sir, when you first took over the station?

A. The investment in merchandise and whatever tools and equipment I took in was around $1800.

The Court: What was your investment in the merchandise?

The Witness: At that time, in 1943, I don't just remember. It wasn't very much. I can't specify.

The Court: The stock was increased after you took it over?

The Witness: Yes; yes.

By Mr. Somerville:

Q. What was your investment, sir, at the time you were getting out of the station?

A. Altogether I sold out for $3800.

[fol. 1440] Q. At that time, Mr. Radke, did you have any competitive items in your inventory?

A. Yes, I had quite a variety of competitive items at that time.

Q. What are you referring to,—seat covers or——

A. Seat covers, and spark plugs, and filters, and tire paint, and car wash, and numerous other items.

Q. Were all those items competitive to some item that was specifically approved by Richfield?

A. Yes.

Q. In selling out to the new operator, did you experience any difficulty with respect to the sale of these items?

A. Yes, I had quite a bit of difficulty. The merchandiser at that time, Mr. Harold Graves, he objected to the new incoming buyers taking over, especially the seat covers. They were not Goodyear seat covers.

Q. Did you nevertheless attempt to sell them?

A. Well, we had quite a battle, but I won out on the seat cover end.

Q. Was that a transaction that was finally approved by him, or did you do it strictly with the new operator?

A. Well, it was approved, of course, by both. It was purely a compromise more or less. I took other items that I still have that were competitive. I sort of compromised and took them, or, rather, I kept them.

[fol. 1441] Q. You still have them?

A. I still have them, yes.

Mr. Somerville: I think that is all.

The Court: Cross examine.

Cross Examination

By Mr. DeMartini:

Q. Attached to the two instruments shown to you, Mr. Radke, the lease dated November 30, 1944, and the one dated October, 1943, there is an exhibit which is marked, "Description of Real Property, Buildings and Improvements, Retail Equipment." Those represent the items which Richfield leased to you, do they not?

A. That's right.

Q. Were you aware of the fact that these instruments were terminable by either party on 24 hours' notice?

A. Yes.

Mr. DeMartini: That is all.

The Court: You may be excused.

(Witness excused.)

The Court: Call the next witness.

Mr. Hall: Mr. William Moldenhauer.

[fol. 1442] William E. Moldenhauer called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

The Clerk: Will you state your name, please?

The Witness: William E. Moldenhauer, M-o-l-d-e-n-h-a-u-e-r.

By Mr. Hall:

Q. I can't hear you, Mr. Witness.
A. William E. Moldenhauer.
Q. Mr. Moldenhauer, where do you reside?
A. Well, my address is at Poulsbo, Washington.
Q. Is that near Bremerton, Washington?
A. Yes, that is north of Bremerton.
Q. You are presently employed by the Government in Bremerton, Washington?
A. Yes, sir.
The Court: In the Navy Yard?
The Witness: That's right, yes, sir.

By Mr. Hall:

Q. On or about the month of June, 1947, did you and your brother, Clarence B. Moldenhauer, enter into a lease arrangement for the occupation and operation of a Richfield service station in Bremerton?
A. We did.
[fol. 1443] Q. What was the address of that service station?
A. 1501 Fourth Street.
Q. Was that West Fourth Street?
A. No, just Fourth Street.
Q. Just Fourth Street?
A. That's right.
Q. In Bremerton, Washington?
A. That's right.
Q. Whom did you first speak with relative to obtaining this station?
A. The bulk plant agent, Mr. Baxter.
Q. Mr. William Baxter?
A. That's right.
Q. He was the Richfield commission bulk plant agent?
A. That's right.
Q. Did he also handle and sell TBA?
A. He did.
Q. You talked this matter over with him?
A. We did.
Q. What was the result of that conversation?
A. Well, there wasn't too much to the conversation. He

was looking for somebody for a station, and we were looking for a station, so it was quite simple. He checked our references, and that was about it. We took over the station.

Q. That is the station that you have given the address [fol. 1444] of on Fourth Street?

A. That's right.

Q. At that time did Mr. Baxter, that is, just prior to your signing the lease, did Mr. Baxter make any statements to you about the operation of the station or the products that were to be handled there?

A. Yes, just before we signed the lease, Mr. Baxter, and the merchandiser, and the TBA man, there was three of them,——

Q. I am talking about the conversation previous to that.

A. Well, no; no, there wasn't.

Q. Nothing was said at that time?

A. No.

Q. Then, as I understand, later on the merchandiser and another gentleman came over from Seattle?

A. That's right.

Q. What were their names?

A. One man's name was, I believe it was Esplin, and the other one, I knew it the other day and I have forgotten it.

Q. Was it a John Knutson?

A. That's right, Johnnie Knutson.

Q. And they came from the Seattle division office?

A. That's right.

[fol. 1445] Q. Were they the two representatives of Richfield that checked you in?

A. They were.

Q. And was Mr. Baxter present?

A. He was part of the time.

Q. Will you tell what conversation you had with any one of those men relative to the products that you were to handle?

A. Well, there wasn't too much conversation at that particular time either. All that was said was that we were expected to carry their—all of their Richfield products.

Q. Who told that you? Do you recall?

A. I don't recall whether it was Johnnie Knutson or Mr. Esplin.

Q. But one said you were expected to carry all of the Richfield products?

The Court: Don't repeat the answer. Strike that out.

Mr. Hall: I was just trying to clear it up in my own mind.

The Court: It is clear enough. You asked him a simple question, and he answered it. You repeat the answer and the witness does not know whether it is a new question. It isn't necessary to repeat it.

By Mr. Hall:

Q. Did you at that time execute the lease?

[fol. 1446] A. We did.

Q. Was that on the Richfield lease Form 542?

A. I don't remember the form number.

Q. Was it a blue form?

A. Yes.

Mr. Hall: Do counsel want to stipulate that as at the time that he entered into the lease——

Mr. Paradise: To answer your question, Mr. Hall, we will be glad to stipulate as to the date and the form number of the lease.

Mr. Hall: Your Honor please, counsel will stipulate that Form 1-E, Government's Exhibit 1-E, will be considered as the lease which was executed.

The Court: 1-E. All right.

Mr. Paradise: Will you state the date of the lease for the record, Mr. Hall?

Mr. Hall: I will have to find the first one. There are several of them here.

Counsel is a little perturbed, your Honor, because this bears a different print date than 1-E. We have examined it, and there is no change in the various print dates.

Mr. Paradise: You might make a statement of the print date on the copy which is attached.

Mr. Hall: This is Form 542, 5-M, print date 3-46, dated the 1st day of June, and signed by the defendant, and by [fol. 1447] both Moldenhauers.

By Mr. Hall:

Q. When did you go into possession of that station?

A. I believe it was in the year, or, the month of June, of 1947.

Q. You gave up possession of the station when?

A. In, I think, I believe it was September, 1950.

Q. September, 1950. During all that time was Mr. William Baxter the commission bulk sales agent and TBA distributor?

A. No, he was not.

Q. Who succeeded him, and when?

A. G. C. Summers succeeded him. I believe it was in about the middle of '48.

Q. Did you ever have any conversations with Mr. Summers about the type of products you were to handle at this station?

A. Yes, very shortly after he took Mr. Baxter's place.

Q. And what was that conversation?

A. Mr. Summers came out to inspect the station, and he told us that he is now going to carry a full TBA line, and he expected us to buy all our products from him that he carried.

Q. And he was the man that also furnished you with the gasoline; is that right?

A. That's right.

[fol. 1448] Q. Who was the merchandiser who was serving that station?

A. I don't recall the man's name that was there in '48. Mr. Knutson and Mr. Esplin were both transferred.

Q. He was the man that regularly called on your station as merchandiser?

A. Yes.

Q. Did you ever have any conversations with him relative to petroleum products or TBA products?

A. Yes, we did. Shortly after he came, I believe about the second stop he made at our station, he informed us that we were carrying a lot of off-brand or nonrecognized merchandise, and we were told to do away with it and replace it with merchandise that was recognized by Richfield Oil.

Q. Were you handling any oils other than Richfield lubricating oils?

A. Yes, we were.

Q. What were they?

A. Well, let's see. There was Quaker State, and MacMillan, and I believe we had some Pennzoil. We handled anything the customer wanted. If we didn't have it, we got it.

Q. Did this merchandiser complain about your handling Quaker State and Pennzoil?

A. He definitely did.

Q. What did he say?

[fol. 1449] A. He told us to cut it out.

Q. What did you do?

A. At the time we didn't do anything. We didn't pay any attention to it.

Q. Did you at any time have to hide any of this stuff?

A. Not for some time, we didn't.

Q. Did either this merchandiser or Ken Elslip discuss with you that other officials from Seattle were coming over?

A. No.

Q. To visit your station?

A. There is a possibility that this other man that was there before Elslip had mentioned something to that effect.

Q. What did he say?

A. That we should either get rid of the oil or hide it.

Q. What did he say about these men?

A. He mentioned something about the "big boys" from Seattle were coming over one of these days, and they were likely to see the off-brand oil there, and they wouldn't like it.

Q. Did he tell you what they would do if they found it?

A. No, I don't think he said anything in respect to that.

Q. Do you recall that you had some conversation with some Richfield representative relative to batteries?

A. Yes, that was Mr. Elslip.

[fol. 1450] Q. What was that conversation?

A. Well, that was after Mr. Elslip took this man's place. Of course, he spoke about all the off-brand articles that we were carrying.

Q. Yes.

A. And he raised Cain about everything that we carried practically, except the Richfield products.

Q. Were you carrying any batteries other than the Richfield-approved Goodyear batteries?

A. We quit the Goodyear batteries entirely for the simple reason that the bulk agent quit carrying the better grade of batteries.

Q. By that you mean Mr. Summers?

A. Mr. Summers, yes. He was complaining that he had too many that had to have adjustments, they kept continually coming back, and he was getting sore at the idea of making adjustments on them. So we started with another line of batteries. We carried the Exide line.

Q. You carried what?

A. The Exide line, and when Mr. Elslip saw our new line of batteries, why, he hit the ceiling. He didn't like the idea at all. I said, "Mr. Summers is not carrying a full line of batteries, and we definitely need a full line of batteries."

He said, "It is not up to you what you have got here." [fol. 1451] He said, "You have to carry what your bulk agent carries. It is up to you to buy from him."

Q. Do you recall that there was some altercation you had, I believe it was with Mr. Summers, relative to Winn oil?

A. That was my brother. He asked Mr. Summers, when we first started to carry Winn oil——

Q. Just a moment. Did you have any conversation with Summers about it, yourself?

A. I did.

Q. Will you explain just briefly what Winn oil is? Is it a general lubricating oil?

A. Winn oil is not. It is a sludge solvent.

Q. It is a sludge solvent?

A. And we had calls for sludge solvents.

Q. You were carrying Winn oil in your stock?

A. At the time we had those calls, we were not carrying any, and Richfield could not supply us with any. In other words, they didn't have any in Bremerton. So a man from Seattle came over that carried this Winn oil, and we started carrying it. And about a week after that Mr. Summers came back over on one evening while my brother was tending the station, and he didn't like the idea of us carrying

Winn oil. He told my brother off, and my brother told me. So next morning, when my brother told me about it, I went and asked Mr. Summers what the score was on this Winn [fol. 1452] oil. I said, "You people don't carry any sludge solvent. What do you want us to do? We have calls for it."

He said, "You don't have to carry it. That is not recognized by Richfield and it is not a nice product for you to have out there on the island."

The Court: What did you do about it?

The Witness: We continued carrying it.

By Mr. Hall:

Q. Did you ever have any conversation with Summers about carrying Quaker State motor oil?

A. Yes. Mr. Summers got a letter from Seattle. I don't recall who signed the letter, or who it was from, but it was from Richfield Oil. It was on a regular form written letter.

Mr. Paradise: I move the answer be stricken.

By Mr. Hall:

Q. Did he show you that letter?

A. He showed me the letter. I read the letter. And I asked him for the letter, and he grabbed it out of my hand, and he said, "No, that is my letter, and not yours." And they told him —for him to get down to the station and see to it that that oil is cleaned out of that station immediately, that they didn't want to see it in there again.

The Court: How was that oil put up? In cans, just like any other oil?

The Witness: Yes, sir, it was in quart cans.

The Court: What company puts it out?

[fol. 1453] The Witness: Quaker State.

The Court: All right.

Mr. Hall: That is all. You may take the witness.

The Court: How about the sludge oil? How was that carried?

The Witness: That is also carried in quart cans.

The Court: Who puts it up?

The Witness: Winn Oil of Seattle.

The Court: Winn is merely the name of the company?

The Witness: That's right, sir.
The Court: All right.

Cross Examination

By Mr. DeMartini:

Q. Mr. Moldenhauer, while we have stipulated to the form of the instrument you had executed, I want to show it to you. It was one of these 542 leases; is that correct?
A. I don't remember the form number, no, sir.
Q. Well, did you sign it?
A. Yes.
Q. Is that your signature?
A. Yes.
Q. Then that is the lease?
A. That must be the one, yes.

Mr. DeMartini: All right.
The Court: Which form is that?
[fol. 1454] Mr. DeMartini: That was one of the 24-hour leases, bearing——
The Court: I mean, is it an L-O?
Mr. DeMartini: It is an L-O form.
The Court: It is an L-O form?
Mr. DeMartini: That is correct.
The Court: All right.
Mr. DeMartini: Will you mark this, please.
The Clerk: Defendant's Exhibit D, for identification.

(The document referred to was marked Defendant's Exhibit D, for identification.)

By Mr. DeMartini:

Q. Mr. Moldenhauer, you stated that Br. Baxter checked your references.
A. He did.
Q. What was the nature of those references?

Mr. Hall: I object to that, your Honor.
The Court: What was that? What did you ask?
Mr. DeMartini: He stated that Mr. Baxter, a Richfield employee, checked his references.

The Court: That does not open it up, merely because a witness throws in something. We are not interested in what they found out. Objection sustained. It is cross examination as to an immaterial matter.

By Mr. DeMartini:

Q. I will show you an instrument marked Defendant's Exhibit D, for identification, consisting of two forms desig-
[fol. 1455] nated No. 205, entitled "Survey of Service Station Operations." Will you state whether that is your signature?

A. That is my signature.

[fol. 1456] Q. Whose signature is that?

A. That is my brother's signature.

Q. And he was there as a partner of yours?

A. That is right.

Q. Do you remember the occasion of either one of these forms being made out?

A. Well, there was a form, I believe, about every 30 days.

Q. About every 30 days. What do these columns at the top of the form entitled "MAINTENANCE S U C TBC" represent, if you know?

A. "Satisfactory," "Unsatisfactory," "Corrected", and "to be corrected," I believe.

Q. Calling your attention in particular to the items on this form which is dated June 2, 1950, it states opposite "Planting area" and under the letter "U" the figure "7", and opposite "Windows clean" under the letter "U" the figure "7", what did those figures represent in connection with those items?

A. Do you want me to give you the full story on this?

Q. Correct, the full story.

A. The full story is this, your Honor: That station was quite an old station. I believe it is about 20 years old. There is a fence, a wooden fence around that place, around the lot. That wooden fence is rotted. It was ready to fall over.
[fol. 1457] We propped it up with sticks to hold it up in various different places. That inspector, he came around and he expected us to plant grass around that fence. Mr. Kirby and various of the other gentlemen from Seattle were over one day and I called Mr. Kirby's attention to that

fence over there and some of the other stuff that should have been repaired. Mr. Kirby says, "We will take care of it." And he made a little notation of it. He says, "We will take care of that and then you will take care of the planting." I says, "That's fine."

Mr. Kirby never showed up after that nor did anybody else to repair that fence or anything else around there. So it wouldn't have done us any good or anybody else to repair the fence, or, I should say, to plant the planting area with a fence that was rotted off and lying over on its side and everything else, as far as making its appearance on the station.

The Court: Then you got a demerit on that account?

The Witness: That is right.

The Court: All right.

By Mr. DeMartini:

Q. How about the "windows clean"?

A. The windows were kept clean, as clean as possible. That depended on the time of the year.

Q. After this complaint was made did you make an effort to clean them up?

A. That depends. I don't remember back to June 1950. [fol. 1458] We might have and we might have not. If I remember correctly, we were trying to get out of the station about then.

The Court: As I understand, it rains the year around in Seattle.

The Witness: That is right.

The Court: More than in California.

The Witness: Yes, it does.

Mr. DeMartini: I offer these in evidence.

The Court: It is hard to keep the windows clean, isn't it?

The Witness: It is hard to keep them clean.

(The document referred to was marked Defendant's Exhibit D and received in evidence.)

Mr. DeMartini: That is all.

The Clerk: This is offered, your Honor, in evidence. Is that admitted?

The Court: No objection? It may be received.

Redirect Examination

By Mr. Hall:

Q. Mr. Moldenhauer, those windows, do they have the decalcomania around the top border indicating Richfield tires like so many of the Richfield stations have?

A. Yes, they have decals all the way around in the sales rooms.

Q. And that is advertising Goodyear products, is it? [fol. 1459] A. That is right.

Q. May I ask you if you know who Mr. Kirby is that you mentioned?

A. I don't rightly remember whether he is—I believe he is the district manager. I am not positive of that. He is one of the——

Q. So far as you know, he is the head man of the northern division?

A. Yes, he is one of the head men of the northern division.

Mr. Hall: That is all.

The Court: Quite a grading of the dealer here.

Mr. Hall: I think our pupil passed very well, if your Honor cares to look at the scoring.

The Court: He had a lot of "100" here.

Mr. Hall: That is one reason I did not object to its admission.

The Court: And he has zero here.

The Witness: Would your Honor excuse me from the court?

The Court: Yes, you are excused. Before we take a short recess, gentlemen, it occurred to me to make this observation.

It is quite apparent to me at the present time from what is going on for the last three days that the defendants are not seriously contending that they did not control the [fol. 1460] activities of the operators of the L-O stations. It would seem to me, if that is the case and the pattern of control having been put in by persons from various stages —I do not know how many witnesses you have—it would seem to me that the amount of testimony directed to that issue, except insofar as may deal with the question of interstate commerce, could be curtailed.

I am not starting to rush you. I don't do that until after the second week, you see. But it occured to me that the counsel are not very much interested. I can tell by the nature of their cross examination and by what they have said into the record. I am just making that suggestion to you.

You are not making any serious contention, aside from any question of legal effect, that you are not controlling the men under L-O contracts, as they call them? I think, in fact, you have insisted at various times that you do control them and tell them what they can buy in the way of products.

Mr. Paradise: Not only we do not deny it, your Honor, but we emphatically assert it.

The Court: Yes, sir.

Mr. Paradise: And it is not limited to control of the type of petroleum products. It covers all types of control of operations.

[fol. 1461] The Court: I am just making this a hint now. If they do not take it, I will do more than hint. After a certain while I will just say I won't allow them to offer any more testimony on that issue, because there is no use to build up a record on an issue on which the pattern has been set and which counsel are not disputing. It becomes then merely a question of law for the court to interpret it, and if we have five witness, they are just as good as if we have 20, because you can see that the pattern does not depend on place. It applies to all your outlets in that group in the six states.

Mr. Paradise: The court appreciates that my statement pertained only to the L-O units?

The Court: That is all I am talking about. I like to ask questions but I never put a man in a corner in asking him a question unless he puts himself there, you see. I am not going to put you in a bad situation. I limit it purposely in my desire to avoid repetition of the pattern.

Mr. Dixon: May it please the court, the Government is of the same view as your Honor has expressed, in view of the pleadings and status of the record as of now, particularly the testimony of Mr. King and the various evidence that has already been submitted in evidence. The

Government does have a considerable number of witnesses. I think the suggestion which your Honor has made, and which I welcome in fact, will be given consideration by the [fol. 1462] Government.

The Court: Yes.

Mr. Dixon: And we will endeavor to reduce the amount of testimony of that type as sufficient to come within the purview of the allegations on commerce and that sort of thing.

The Court: Yes, all right. Court will be in recess.

(Short recess)

[fol. 1463] The Court: All right, gentlemen, call your next witness.

Mr. Hall: Mr. Heinekin.

Ernest P. Heinekin called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

The Clerk: Will you state your name please?
The Witness: Ernest P. Heinekin.

By Mr. Hall:

Q. How do you spell your last name, Mr. Heinekin?
A. H-e-i-n-e-k-i-n.
Q. You reside in Spokane, Washington?
A. Yes.
Q. And your present occupation?
A. Service station operator.
Q. For Richfield?
A. Yes.
Q. What is the location of that station?
A. 325 South Washington.
Q. In Spokane?
A. Spokane.
Q. When did you enter into possession of that station?
A. On May 1, 1950.

[fol. 1464] Q. Was that the first Richfield station that you had ever operated?

A. Yes, sir.

Q. Prior to that time had you ever operated any service stations?

A. Yes, I was operating a service station for Shell Oil for eight years.

Q. Was that immediately prior to your going with Richfield?

A. Right.

Mr. Paradise: I am sorry. We can't hear you, Mr. Heinekin.

The Court: Yes, speak up loud so that they can hear you.

The Witness: All right.

By Mr. Hall:

Q. Will you tell us the circumstances that led up to your obtaining this Richfield station?

A. Well, I was ready to quit the oil business, and I had notified the Shell Oil Company I was going to terminate my lease, and in the meantime Mr. Anderson, he was——

Q. Who was Mr. Anderson?

A. He was a Richfield division man at that time in Spokane, and he found out about it, and so he called me up on the telephone and asked me if I would be interested in a service station. And I asked him where. He said, "At [fol. 1465] Fourth and Washington." And I said, "Well, I don't know," and I said, "I would have to think it over." And he said, "Well, will you go down and look at it?" I said, "I will." So I went down and looked at it, and I decided—I told him, or, I asked him how much rent. Well, he said, "What would you consider?" I said, "That's your business, and not mine."

And so we agreed on a rent proposition, and they sent it to San Francisco, and it was approved, and come back, and I leased the station.

Q. When you were checked into the station, who checked you into that station?

A. A man by the name of Mr. Neff.

Q. Was Mr. Anderson also present?

A. He was there just for a little while.

Q. At that time did you make any inquiries of either Mr. Anderson or Mr. Neff, or did Mr. Anderson or Mr. Neff make any statement to you about the products that you were to sell at that station?

A. Yes, they told me.

Q. Who made that statement to you?

A. Mr. Neff.

Q. Mr. Neff. And what did he say?

A. He told me that I would have to handle Richfield products. And I told him I understood that before I signed the lease.

[fol. 1466] So I said, "What about the Pennzoil," I said, "that's on the shelf?"

Well, he says, "You will have to buy that from the outgoing dealer because it's here."

Q. How many cans were there?

A. We counted seven quarts in the inventory.

Q. And did you ask him about TBA?

A. Yes, I asked him about TBA, and he told me I had to buy TBA from Mr. Leo Hobson, he was the Goodyear supplier at Spokane.

Q. Did you enter into a lease with Richfield at that time?

A. Yes, I did.

Mr. Hall: Do you want to stipulate?

Mr. Paradise: Here it is. (Handing document to counsel.)

Mr. Hall: Do you want to stipulate?

Mr. Paradise: Why don't you show it to him?

Mr. Hall: Will you mark this, please?

Mr. DeMartini: That is not necessary. Just show it to him.

Mr. Hall: Oh, you don't want that. Otherwise you are willing to stipulate that is similar to 1-E?

Mr. Paradise: It is 1-E.

Mr. Hall: It is, yes.

[fol. 1467] By Mr. Hall:

Q. I will hand you service station lease, which is Richfield Form 542, with the print date of 1-47, which has been agreed between counsel is similar to Government's Exhibit 1-E in this case, and ask you if that is the lease which you signed.

A. Yes, that is my signature.

Mr. Paradise: Mr. Hall, this form of lease is not your Exhibit 1-E, but that particular print date is attached to the stipulation which constitutes Defendant's Exhibit A.

Mr. Dixon: It is a reprint.

Mr. Hall: It is a reprint of 1-E, yes.

Mr. Paradise: I don't know whether there are any changes or not in those.

Mr. Hall: I will give you my personal assurance, Mr. Paradise, they are not substantial.

Mr. Paradise: Thank you, Mr. Hall.

By Mr. Hall:

Q. You purchased that Pennzoil, did you?

A. Yes, I did.

Q. Did you sell it?

A. Yes, I did.

Q. Did you buy any more Pennzoil?

A. Yes, I did.

Q. Did you run into any trouble with Mr. Neff, or any other Richfield executive, because you bought more Pennzoil?

A. Yes, I did.

[fol. 1468] Q. What?

A. Well, Mr. Neff come in one day and looked at the lube room, and he saw some more Pennzoil on the shelf, and he said, "You bought some more Pennzoil." I said, "Yes. I have quite a few customers who are using Pennzoil here from the previous operator, and they are demanding it."

He said, "Well, you'd better get it off the shelf."

I said, "Why?"

He said, "There will be some big shots over from Seattle in the next day or two," he didn't mention their names, and he said, "Put it in a cardboard box so they don't see it, because they won't like it very well." But he never did tell me to take it off the premises.

Q. Did you continue to handle it?

A. Yes, I did.

Q. Did you ever have any trouble with him about Firestone tires? Do you recall any incident about Firestone tires that you were handling?

A. No, I don't.

Q. What about Willard batteries?

A. Yes.

Q. What is the Richfield-approved battery?

A. Goodyear.

Q. Did you purchase some Willard batteries?

A. Yes, I did.

[fol. 1469] Q. Will you advise the Court the circumstances of the transaction that you had with Richfield relative to those batteries?

A. Well, I bought some batteries from the Quality Supply Company in Spokane, which were distributors for Willard batteries, and I put them on my display rack, which I bought. It was mine. I bought it.

Q. By the way, what salesman did you purchase them from?

A. Mr. Green.

Q. Mr. Herman Green?

A. Yes.

Q. Go ahead.

A. And so I put them on display, and Mr. Neff come in one day and said to me, he said, "That don't look very good."

I said, "Why?"

He said, "Well, you should have Goodyear batteries."

Well, I said, "If you can give me a deal like the rest of the wholesale houses do, I will buy my batteries from Goodyear," and I said, "I called up Mr. Hobson and he told me he could not give me any deals like the other operators could, because he wasn't in a position to handle that affair that way."

I asked Mr. Neff the same thing, and he answered the same way, that Mr. Hobson can't do it like some of the [fol. 1470] fellows can, give you a special rate, like I had.

Q. As I understand it, you were able to buy the Willard batteries with a better discount than you could get with Goodyear?

A. I did at that time, yes sir. At that time I did, and I also bought Seiberling batteries, and I bought them cheaper, too.

He said, "How come you bought them?"

I said, "I bought them out of Portland on a direct shipment on a West Coast fast freight, prepaid to the door, and the middleman gets cut out, and I save that money."

[fol. 1471] Q. Did he object to your having those Seiberling batteries in your station?

A. Mr. Neff says to me, "It don't look very good." He says, "Why don't you turn the name brands around to the wall," he says to me.

Well, I says, "It is a standard brand piece of merchandise. I shouldn't be ashamed of it."

He said, "It just don't look good. You should have Goodyear's."

So I turned the names to the wall, that is a fact, and it has been until not so long ago.

Q. Did you communicate that information about what Mr. Neff told you to do with those batteries to any other person?

A. Yes, I did.

Q. Did you tell Mr. Green?

A. Yes, I told Mr. Green that.

Q. Do you remember the occasion on which you told Mr. Green that?

A. No, I don't.

Q. Do you remember whether he came into your station, or did you see him otherwise?

A. No, Mr. Green called on me regular once a week, as a wholesaler out of Quality Supply at that time.

Q. Did he make any statement to you about the batteries?

[fol. 1472] A. Well, he said—he come in one time, and, well, I said, "I am going to have to turn your brand of batteries against the wall." I said, "You are lucky I don't have to make you take them back. I can still sell them. They didn't tell me to take them out."

Q. You say Mr. Green called upon you regularly once a week?

A. Right.

Q. Did you purchase any articles from Mr. Green or the Quality Supply Company that were items that were competitive with the Richfield approved brands?

A. Just batteries.

Q. Just those batteries?

A. Yes.

Q. Did you explain to Mr. Green why you didn't make other purchases from him?

A. Yes.

Q. What did you tell Mr. Green?

A. I told Mr. Green that we were told to buy from the Goodyear dealer exclusively, Mr. Leo Hobson.

Q. By "we were told," you mean you were told by Richfield?

A. Yes, by Mr. Neff.

Q. And that was the excuse you gave to Mr. Green for not purchasing from him?

[fol. 1473] A. Yes.

Q. Was that or was that not the truth?

A. That was the truth.

Q. Did you ever have any difficulty about signs upon your premises?

A. No.

Q. Has your station that large, wide decalcomania sign at the top of the office part, that advertises Goodyear products?

A. Yes.

Mr. Hall: You may take the witness.

Cross Examination

By Mr. Paradise:

Q. Mr. Heinekin, what is the average gallonage in your station?

A. Oh, it runs around 8,000. I presume between seven and eight thousand.

Q. Has it been that ever since you have been in there?

A. It was 2,000 when I took it over.

Q. 2,000 when you took it over?

A. Right.

The Court: How long ago was that?

The witness: I took it over the 1st of May, 1950.

The Court: I see.

[fol. 1474] By Mr. Paradise:

Q. Now, this lease that you executed dated May 2, 1950, at the time you took possession of the station you were

familiar with the fact that it contains a clause giving either you or Richfield the right to terminate it on 24 hours notice?

A. Yes.

Q. Was that discussed between you and Mr. Neff?

A. Yes.

Q. What was the discussion concerning that?

A. Well, Mr. Neff gave me the lease and told me to read it over, and I read it over, and it says in there a 24-hour lease.

Q. Did he explain the reason why the 24-hour clause was in there?

A. Well, he said that was because any termination—if something that was not satisfactory come up, why, they could relieve me in 24 hours.

Q. Isn't it correct, Mr. Heinekin, that he told you that it was to be expected of you to operate the station completely in the manner in which Richfield directed?

A. That's right.

Q. With respect to the hours, uniforms, type of service, maintenance, and things of that sort?

A. Well, I beg your pardon. According to hours, he told me to regulate my own hours accordingly, which I thought [fol. 1475] was the best time for business, which I did.

Q. He told you it was not necessary for you to remain open for 24 hours a day; is that right?

A. That's right.

Q. How long do you keep the station open?

A. From 7:00 to 10:00.

Q. From 7:00 in the morning until 10:00 at night?

A. Yes.

Q. Was there also any discussion concerning the wearing of a uniform?

A. Yes, there was.

Q. What was said by Mr. Neff concerning that?

A. He told me to go down to Bandy's or Crescent to buy uniforms.

Q. Did he not tell you it was necessary for you and any of your employees to wear Richfield uniforms, showing the Richfield insignia, a standard uniform?

A. Yes.

Q. Was there any statement by Mr. Neff concerning the restrooms or the cleanliness of the station, and the upkeep,

and the manner in which that would be expected of you?

A. I didn't get the first part.

(The question was read.)

A. Yes, sir, and they made a few comments on the cleanliness and operation of the station, and made us fill out a [fol. 1476] form every 30 days.

Q. Was there any discussion between you and Mr. Neff concerning the matter of your personal appearance?

A. Yes.

Q. Will you state what Mr. Neff told you?

A. He always told me to try to be as clean as possible.

Q. Did Mr. Neff make any statements concerning the matter of your dealing with the customers at the station?

A. No, he did not.

Q. You don't recall that?

A. No, I don't.

Q. Have you ever been informed by either Mr. Neff or a merchandiser, who subsequently came into the station, as to the island procedure and the so-called 5-point safety service and how to lubricate cars, and so on?

A. No, sir, I was not, because Mr. Neff told me with all the years experience I had he figured I knew the business well enough that he would not have to show me.

Q. So he took it for granted?

A. He told me that personally. I am not lying to you either.

Q. Now, subsequent to the time when you were installed in the station, what merchandisers came to your station? Can you remember their names?

[fol. 1477] A. Well, I don't get you. What do you mean on merchandisers? What merchandisers do you refer to? Richfield's?

Q. Yes.

A. Mr. Neff is the only merchandising man you have at Spokane. He was the only one that I saw there, of course.

Q. He was the only one that came in?

A. Yes.

Q. How often did Mr. Neff come in there?

A. Mr. Neff called on me once a week.

Mr. Paradise: May I see the Defendant's Exhibit C?

(The document was handed to counsel.)

By Mr. Paradise:

Q. Mr. Heinekin, I will show you Defendant's Exhibit C, which is a Form 205, and called "Survey of Service Station Operations," and ask you if when Mr. Neff came to your station, if you and he together did not discuss the items on this, and it was signed by both of you?

A. That's right.

Q. How often did that occur?

A. Once a month.

Q. Once every month?

A. Yes, sir.

[fol. 1478] Q. At the time you first went into the station, Mr. Heinekin, did you receive any financial assistance from Richfield?

A. Yes.

Q. Did you apply for it?

A. Yes.

Q. Mr. Heinekin, I show you an instrument entitled "Richfield Oil Corporation Loan and Bond Application" bearing form No. 1142 and ask you if this is your signature appearing on that form?

A. There it is, yes.

Q. At the time you signed this application were both of these instruments together or was it just the top one? Have you ever seen this second instrument?

A. I never saw this before but I did sign that one there.

Q. The attachment you have not seen?

A. That is right.

Mr. Paradise: Then, if the court please, I will offer only the first page of this instrument as Defendant's Exhibit next in order.

The Court: All right, it may be received.

The Clerk: Defendant's Exhibit E.

(The document referred to was marked Defendant's Exhibit E and received in evidence.)

[fol. 1479] By Mr. Paradise:

Q. Pursuant to this application, Mr. Heinekin, did you receive a loan of money from Richfield?

A. Yes, I told you that.

Q. In what amount, if you recall?

A. Well, I know that it wasn't quite enough from what I sold my previous station. They loaned me enough to pay up where I had to buy the equipment where I am now. It was all new equipment, so they loaned me the money.

Q. What was the equipment you required for this station?

A. There was tools, a grease rack. They had a grease rack on the wall with different grease guns on and you buy that. You have your air compressor and electric battery charger and your drain tank where you drain your waste oil in.

Q. You are talking about movable tools?

A. That is correct.

Q. Is that the same equipment you purchased from the former operator at the same Richfield station?

A. That is right.

Q. Were you informed by Mr. Neff that you would be expected to buy that before you would be permitted to enter the station?

A. Yes, sir. Yes, sir.

Q. Do you know how the price on that was figured?

[fol. 1480] A. $798.

Q. I mean how it was arrived at. Was it on a depreciated original cost, do you know?

A. It was $790 less 10 per cent. I think I am pretty near close there.

Q. Subsequent to the time you entered the station were you ever informed by Mr. Neff of the occurrence of any training schools that you would be expected to attend?

A. They told me if they have some in Spokane I was supposed to attend them, yes.

Q. Were you so informed about the training school?

A. I was so informed, but they never had any.

Q. You did not attend one, then?

A. No, they never had any. They told me in case they did I was supposed to attend one.

Mr. Paradise: No further questions.

The Court: Any redirect?

Mr. Hall: Yes, your Honor. Mr. Paradise, are you going to offer that?

Mr. Paradise: I already have. It is admitted.

Mr. Hall: I did not know it had been admitted. May I have it?

Mr. Paradise: Yes.

[fol. 1481] Redirect Examination

By Mr. Hall:

Q. Mr. Heinekin, handing you Defendant's Exhibit No. E, which is a loan and bond application for $800, it states in here: "I authorize the company to use this application for the purpose of obtaining bond with any bonding company that they may choose for an amount not exceeding $1,000." I will ask you did you ever execute a bond or receive a bond from any bonding company for any purpose?

A. No, sir.

Q. You did receive——

The Court: I did not hear your answer.

Mr. Hall: He said, "No, sir," your Honor.

The Witness: No, sir.

The Court: No. All right.

By Mr. Hall:

Q. And you received credit for some amount, I believe you testified, less than $800 from Richfield which you have had to pay back?

A. Yes.

Q. Do you know that at the time you executed this that included in that $800 was a $50 service fee which you had to pay Richfield for loaning you that money?

A. Yes.

Q. You are paying that back?

A. Yes.

[fol. 1482] Q. And is that loan all paid back yet?

A. Almost, not quite.

Q. You stated your hours were from 7:00 to 10:00 o'clock?

A. Yes.

Q. Do you operate the station alone and by yourself during that period?

A. No.

Q. I can't hear you.

A. No.

Q. Do you have other employees?

A. My son helps me.

Q. Your son helps you. And do you have to pay him or give him something?

A. I give him spending money.

Q. Spending money for that. And your hours are for the 15 hours a day, is that correct?

A. From 7:00 until 10:00.

Q. 7:00 until 10:00. Is that seven days a week?

A. Seven days a week.

Q. Seven days a week, including Sunday?

A. That is correct. Not in the wintertime, though.

Q. Well, you have more severe winters in Spokane than we do here.

The Court: I should say so.

[fol. 1483] By Mr. Hall:

Q. About these uniforms I don't remember what you stated. Did you get these uniforms?

The Court: Yes. I asked him how much he paid for them.

Mr. Hall: But he paid for them. I wanted to bring that out.

The Court: Yes, he bought them.

By Mr. Hall:

Q. About your bookkeeping equipment and your records, did Richfield recommend that you acquire certain bookkeeping records?

A. Yes.

Q. Or records to keep the record of things?

A. I had my own bookkeeping equipment.

Q. You had your own bookkeeping?

A. Yes.

Q. They did not furnish any of it for you?

A. No.

Q. Did you ever use these little—I think they call them door stickers—that they put inside of the door jamb of the car?

A. Yes, I do.

Q. To show the owner when his car was last lubricated?

A. Yes, I do.
Q. Do they bear the Richfield name on there?
A. Yes, they do.
Q. Do they bear your name?
A. We stamp our own name on with a stamp. We have [fol. 1484] our own stamps made out with our name and address and telephone number on, and we stamp those on there.
Q. Where did you get those stickers?
A. From the Richfield merchandise man.
Q. Do they furnish those to you free?
A. They do not.
Q. Do you have to buy them?
A. Yes.
Q. How much do you have to pay for them?
A. The last ones I bought, I paid a dollar for 10.
Q. A dollar for 10?
A. That is those tags.
The Court: You are repeating.

Mr. Hall: I am sorry, your Honor.
The Court: It is a bad habit to form.
Mr. Hall: A bad habit.

Q. You also have to furnish towels, toilet paper, and supplies for the restroom?
A. Yes, we do.
Q. Furnish that with your own money?
A. Yes, we do.
Q. Besides Mr. Green who calls upon you, do other salesmen from other supply companies, automotive supply companies and tire companies and battery companies call upon you?
[fol. 1485] A. They have, yes.
Q. In what numbers? Are there a great many of them or——
Mr. Paradise: Objected to as leading and also immaterial.
The Court: Overruled. Go ahead.
A. There is a few.
Q. And have you substantially given them the same answer that you have given Mr. Green?
A. That is right.

Q. Now, about this training course that you have talked about. You stated that you never took it?

A. No, I did not.

The Court: They did not have any. He said they did not have any. They never notified him that they had any.

A. I was never notified, but I was told in case they have a training school I was supposed to attend it. I told them I would but they never had one.

By Mr. Hall:

Q. Where would that have been held, in Spokane or somewhere else?

A. Yes, in Spokane.

Q. Were you to be paid for your time while you were attending that?

A. No.

Q. Not anything?

A. No.

Q. How many days was it to run, do you know?

[fol. 1486] A. I don't know.

Mr. Hall: That is all.

Mr. Paradise: No questions.

Mr. Hall: Mr. Heinekin, you may be excused.

The Court: You may be excused. Have you got a brief witness from out of the state?

Mr. Greer: Yes, your Honor. There is a witness from Idaho we would like to take today.

The Court: What?

Mr. Greer: There is a witness from Idaho whom we have been promising he could get back.

The Court: Yes. Put him on.

DOUGLAS COLBECK, called as a witness by the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: Will you state your name, please?
The Witness: Douglas Colbeck.

Direct Examination

By Mr. Greer:

Q. What is your name?
A. Douglas Colbeck.
Q. Where do you live, Mr. Colebeck?
A. Moscow, Idaho.
Q. Are you a native of Idaho?
A. No.
[fol. 1487] Q. Where did you come from originally?
A. Michigan.
Q. How did you happen to come to Idaho?
A. A friend out there and I came out on a visit.
Q. What was his name?
A. Kenneth Wolverton.

Mr. Paradise: Who?
The Witness: Kenneth Wolverton.

By Mr. Greer:

Q. W-o-l-v-e-r-t-o-n?
A. Correct.
Q. How did you and he happen to go to Idaho?
A. He was there prior to the time I came out. He has been out there for several years.
Q. What kind of a proposition did he extend to you?

Mr. Paradise: Well, as to that I am going to object.
Mr. Greer: This is just preliminary.
The Court: Let us get down to it. I will sustain the objection.

By Mr. Greer:

Q. Did you and he go in together and buy a Richfield outlet?
A. Yes.

Q. Approximately how much money did you invest?

A. $6,000.

Q. How much of that did you put up?

A. $3,000.

[fol. 1488] Q. When was that?

A. March 1st, 1947, I believe.

Q. Do you still operate that station?

A. I do.

Q. Is Mr. Wolverton still in it?

A. No. He left December of the same year.

Q. Did you buy him out?

A. I did.

Q. How much do you think your current investment is?

A. We have a greater stock and new equipment, so there would be more than that now.

Q. Mr. Colbeck, is that a leased out station?

A. Yes.

Q. How much of the equipment and property there is owned by Richfield?

A. The building, grounds, compressor, pumps, hoist and six oil lubsters.

Q. How much property there do you own? Do you own the cash register?

A. Yes.

Q. Do you own the battery chargers?

A. Yes.

The Court: Let him tell us. He can tell what he owns. He has got $6,000 of property. He probably knows. You just kind of reel it off fast.

[fol. 1489] A. Cash register, adding machine, battery chargers, high-pressure grease equipment, hand guns, vises, small tools, floor jacks.

Q. When you put a gear-oil into a car is that gear-oil dispenser yours?

A. Yes.

Q. Does it contain Richfield gear oil?

A. It does.

Q. Do you purchase authorized TBA from the TBA distributor?

A. I do.

Q. What is the oil filter that you get from the Richfield man?

A. Purolators.

Q. Have you ever bought any Fram oil filters?

A. Yes.

Q. And is that an authorized filter?

A. It is not.

Q. Has anything ever been said to you by a Richfield representative about handling Fram filters?

A. On one occasion, yes.

Q. When was that?

A. Oh, a few months after I had the station. I had purchased a dozen or two—I don't recall—I had them on the bench. Mr. Wynn came in and he objected very strongly [fol. 1490] to it.

Q. Who is Mr. Wynn?

A. The merchandiser.

Q. Why did you buy those Fram filters?

A. At that time I had a number of customers who were Ford owners, and Fords are Fram equipped and they requested Fram filters.

Q. Was anyone else present?

A. No.

Q. What did Mr. Wynn say to you about those Fram filters?

A. He said, "Do you know you are not supposed to handle those filters?" And I acknowledged the fact that I was not supposed to. "Furthermore," he said, "we can stop you from putting them on the credit cards." And I informed Mr. Wynn I had never put any on credit cards, that is, company credit cards.

Mr. Greer: That is all.

Cross Examination

By Mr. DeMartini:

Q. I show you an instrument, Mr. Colbeck, bearing Form 542 and a print date 1 '47. Is that the lease under which you operate your station?

A. Yes.

Q. That is your signature?

[fol. 1491] A. That is right.

Q. And attached to that lease is an instrument entitled "Description of real property, buildings and improvements, retail equipment", bearing at the bottom thereof schedule A. Does that represent the equipment and facilities leased to you by Richfield?

A. Yes, I believe it does.

Q. What is the rental specified in that lease?

A. $30 flat guarantee and one cent a gallon. In other words, I would pay $30 a month whether I sold any gasoline or not, and if I sell 3,000 gallons of gasoline, the $30 figures occur on the first 3,000, and thereafter I pay at the rate of one cent a gallon. So it actually figures out one cent a gallon.

Q. What is your gallonage per month at that station?

A. It varies according to the season. It has been as high as 17,000 I sold.

Q. When it is 17,000 you pay $117.

A. Yes, that is correct.

Q. Has it ever been less than $3,000?

A. It never has.

Q. So you have never paid more than one cent a gallon?

A. That is correct.

Q. You said that you invested $6,000 in this station, you and your partner did, at the time that you purchased it?

[fol. 1492] A. That is right.

Q. Did you have any conversation at or about that time with a Mr. Wynn, a Richfield merchandiser, respecting the amount that you should pay for that station?

A. Never with Mr. Wynn. Perhaps Mr. Wolverton did but I never did.

Q. Do you understand what the Richfield merchandisers mean when they use the term "blue sky"?

A. I do.

Q. Were you present at any conversation where Richfield merchandiser or any Richfield representative told you not to pay blue sky to the outgoing operator of that station?

A. Mr. Wynn told me after I had purchased the station that the company would not permit that station to be resold at blue sky. But he did not tell me that at the time of the purchase. As I said before, he may have told Mr. Wolverton, but he did not tell me.

Q. Who handled the negotiations with Mr. Wynn?

A. At the time the lease was negotiated I was not present. Mr. Wolverton was present. I returned to Michigan and did not come back out, until I think it was the 21st day of March.

Q. So you do not know whether Mr. Wynn told Mr. Wolverton that?

A. I would have no knowledge of that.

[fol. 1493] Q. Mr. Wolverton never told you that Mr. Wynn told him that?

A. He did not.

Q. Have you ever had any discussions with any Richfield merchandisers relative to the manner in which you should keep the station, that is, with respect to cleanliness and equipment and credit cards?

A. Yes.

Q. What were you told?

A. We have been told—in fact we were supplied with a manual which tells us what Richfield products are allowed on the credit cards, and we are told what maintenance schedule the station shall be, the type of uniform we shall wear, and they suggest the hours that we keep, also.

Q. You are aware of the fact that that lease contains the 24-hour termination privilege in it on the part of either party?

A. I sure am.

Q. What is your understanding of the purposes of that short termination privilege?

A. Well, my understanding is that in 24 hours I can be dispossessed if the company sees fit.

Q. For any reason?

A. For any reason the company figures is justifiable.

The Court: You understand you have the same right?

[fol. 1494] The Witness: That is correct.

The Court: To move out?

The Witness: I understand that.

By Mr. DeMartini:

Q. I will show you an instrument entitled Form 205, "Survey Service Station Operations." A blank copy of it

is in evidence as Defendant's Exhibit C. Can you explain the nature of the use of those documents?

A. Mr. Wynn, who is now termed, I believe, special representative, he comes around monthly and makes this report out which I sign.

Q. What does the report indicate?

A. The condition of the station, my personal appearance, merchandise, whether or not it is clean and properly displayed.

Q. And you discuss those items with Mr. Wynn?

A. That is correct.

Q. And if they are unsatisfactory do you correct them from time to time?

A. Yes.

Q. What did you do before you became a service station operator at this station?

A. I was employed by two different companies, by the Murray Body Corporation for a little over 19 years, and about six months by Standard Products.

Q. Were you ever in the service station business before? [fol. 1495] A. No.

Mr. DeMartini: That is all.

Mr. Greer: You are excused.

The Court: All right, you may be excused.

Mr. Hall: Shall I proceed, your Honor?

The Court: How long will this man take?

Mr. Hall: I think we will finish up before 5:30.

The Court: Where is he from?

Mr. Hall: He is from Spokane. I can use him tomorrow just as well.

The Court: I think we just as well. I have other things to do.

Gentlemen, before we adjourn until tomorrow I think I had better tell you so you can make your plans. Ordinarily we try cases only four days a week because Monday we have law and motion matters which keep us occupied, in addition to which I have set short cases for various Mondays. However, as this case progresses I may not follow the rule. I may dispose of those matters on Mondays in a different manner. So that we will have to agree each week as to what we are going to do. But this coming Monday I have a very

heavy calendar, including an argument on the constitutionality of the Patton-Robinson Act in a group of cases which I have taken over from other judges. That will keep me very busy. I have already written one opinion determining that [fol. 1496-1499] the Patton-Robinson Act is an antitrust act and I may have to write another one this week. I do not know. We will see.

At any rate, when we adjourn tomorrow the case will be continued until Tuesday. I thought I would tell you that so that if you have any witnesses who come from a distance and you do not want to hold them over here for that length of time, you had better run through as many from a distance as you can tomorrow so they won't have to stay over until Tuesday.

Mr. Dixon: We will plan to do that, your Honor. Thank you.

The Court: All right.

(Whereupon a recess was taken until 10:00 a.m. of the following day, Friday, May 11, 1951.)

[fol. 1500] Friday, May 11, 1951

10:00 A.M.

The Court: Cause on trial.
Mr. Hall: Mr. Louis H. Rhodes.

Louis F. Rhodes, called as a witness by the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: What is your name, please?
The Witness: Louis F. Rhodes.

Direct Examination

By Mr. Hall:

Q. Where do you reside, Mr. Rhodes?
A. In Spokane, Washington, 108 East Dalton.
Q. And your present occupation?
A. I am an oiler for Morris-Knudsen Contruction Co.

Q. And previously you operated a service station in Spokane, Washington, at East 2027 Sprague Avenue?

A. Yes, sir.

Q. And when did you go into that station?

A. I went in the station July 1st, 1949.

Q. And left it when?

A. November the 20th, 1950.

Q. I will hand you this document inscribed "Form 542" with print date of January 1947, and ask you if this is the lease which you signed for the operation of that service station?

[fol. 1501] A. Yes.

Mr. Paradise: Mr. Hall, will you identify for the record the date of the lease, please?

Mr. Hall: The lease is dated July 1st, 1949, between Richfield Oil Corporation and L. F. Rhodes. You will stipulate, will you, counsel that this is the same or similar to Government's Exhibit 1-E already in evidence?

Mr. Paradise: I will stipulate that it is similar. I have not compared it with that particular print date. This print date is attached to the stipulation as Defendant's Exhibit A.

Mr. Hall: Yes, it is Defendant's Exhibit A.

Q. About how long before you signed this lease did you enter negotiations for the renting of this property?

A. About two weeks.

Q. And who did you talk to?

A. I talked to the former operator, Don McCombs.

Q. His name is spelled M-c-C-o-m-b-s?

A. Yes.

Q. And then when was the first time that you contacted Richfield Oil Corporation in relation to renting this property?

A. About one week prior to the time I took the station.

Q. And who did you talk to?

A. Mr. Al Cloninger.

Q. C-l-o-n-i-n-g-e-r?

[fol. 1502] A. Yes.

Q. And who was he?

A. He was the merchandiser for Richfield at that time.

Q. Was he also a commis-ion agent or did you buy your

gasoline from him subsequently, or was he just a merchandiser?

A. He was just a merchandiser.

Q. Just a merchandiser. Did you make the arrangements and negotiations with him to rent this property?

A. Yes, sir.

Q. What was the conversation that you had with him when you first approached him about renting this property?

A. Well, I said I would like very much to lease the station and buy it from Don McCombs. And he said that would be all right, but he did object to me buying some of Don McComb's merchandise.

Mr. DeMartini: I move to strike that.

Mr. Hall: Wait a minute. This is a conversation.

The Court: Well "objects" is a conclusion. What did he say?

By Mr. Hall:

Q. What did he say?

A. He said I couldn't buy Don McCombs' 14 Lincoln batteries which were in stock at that time.

Q. He told you that——

The Court: Do not repeat, please. I do not approve of it. I hear very well, gentlemen. If you are in doubt, just [fol. 1503] try me sometime and see how much I hear, when you think least that I am paying any attention.

Mr. Hall: I know you do.

The Court: I have a method. All right, go ahead.

By Mr. Hall:

Q. Were those batteries in the station at the time?

A. Yes.

Q. Do you know whether or not Mr. Cloninger or any other Richfield man had caused any trouble about those 14 Lincoln batteries?

A. Well, there wasn't a great deal of trouble, except that I couldn't——

Q. No. Before you went in there?

A. No.

Mr. Paradise: Objected to for lack of proper foundation.

Mr. Hall: I asked him if he knew it.

Mr. DeMartini: I object to it on the grounds it is immaterial and irrelevant.

The Court: Sustained.

[fol. 1504] By Mr. Hall:

Q. You took over possession of the property, I believe you said, on July 1, 1949?

A. Yes.

Q. What did you do with those batteries?

A. I took them home, in my basement, and tried to help Don McCombs out, to get rid of them at 10 per cent below cost.

Mr. Paradise: I move that that be stricken, if the court please. That obviously relates to batteries he did not buy from the outgoing dealer.

The Court: Well,——

Mr. Hall: It is all linked up with Mr. Cloninger's statement.

The Court: The reason I started to object is that you are interpreting his language. Let the language speak for itself.

Mr. Hall: I have forgotten the last question. Will you read the last question?

(The question was read.)

By Mr. Hall:

Q. You didn't keep those batteries in the station, did you?

A. No, sir.

Q. Now, was there anything else said to you by Mr. Cloninger or by any other Richfield representative as to the products that you were to handle in this station which you [fol. 1505] had leased?

A. He said that——

Q. Who?

A. Mr. Cloninger stated that we should tie in with the Richfield program and sell their approved merchandise, which I was agreeable to at that time.

Q. Did he ever say anything about the petroleum products that you were to handle?

A. I assumed—we assumed that I would sell Richfield products, and petroleum products.

Q. Did you ever handle any Quaker State, Pennzoil, or other lubricating oil?

A. Yes, I did for a while. There was one customer wanted to buy Quaker State, and so I kept a few quarts of Quaker State for him out of—off of display.

Mr. Paradise: I move to strike the last portion of the witness' answer concerning the customer.

The Court: It may be stricken, unless he told the representative.

By Mr. Hall:

Q. What did you do with the oil?

A. I kept it off display.

Q. Where?

A. Well, in the service station, in the lubrication unit.

Q. Out of sight.

[fol. 1506] A. Out of sight.

Q. Did Mr. Cloninger or any other Richfield representative, ever complain to you about it?

A. No.

Q. Did they ever see it, so far as you knew?

A. So far as I knew, they never seen it.

Q. Did you at this station,—it is located on Sprague Avenue; is that right.

A. 2027 East Sprague Avenue.

Q. And Sprague Avenue is a main east and west highway, a through highway?

A. It is a main highway, yes.

Q. Do you receive many calls for Pennzoil or Quaker State or other products other than the Richfield recommended products?

A. Yes.

Mr. Paradise: Objected to as immaterial.

The Court: Overruled.

By Mr. Hall:

Q. When you received these calls did you have to turn the customer down many times because you didn't handle them?

A. Yes.

Q. What hours were you open at this station, Mr. Rhodes?

A. 8:00 till 8:00. 8:00 A. M. till 8:00 P. M.

[fol. 1507] Q. Were you operating this station alone?

A. Practically alone, except for some help from my younger brother, who just helped me out and relieved me for lunches.

Q. But you had to work the entire hours yourself?

A. Yes, sir.

Q. Or most of them?

A. Yes, sir.

Q. When you went into the station, did you have to purchase any equipment?

A. Yes.

Q. How much did you have to pay for the equipment which you purchased?

Mr. Paradise: Objected to as immaterial.

The Court: Overruled.

The Witness: About $400.

By Mr. Hall:

Q. About $400. Who succeeded Mr. Cloninger as merchandiser?

A. Mr. Verne Neff.

Q. Was he the merchandiser at the time you gave up this station?

A. Yes, sir.

Q. Did either Mr. Cloninger or Mr. Neff, or any other Richfield representative, ever make any other complaints to you about articles that you were handling?

[fol. 1508] A. No, not to my knowledge.

Q. In your operation of the station, after those two incidents, you pretty much kept it 100 per cent Richfield; is that right?

A. I stayed in line.

Mr. Hall: Your witness.

Cross-examination.

By Mr. DeMartini:

Q. I will show you the lease, Mr. Rhodes, that was shown to you a moment ago. You will note that it is terminable by either party on 24 hours notice. Did you notice that was in there at the time you signed it?

A. Yes.

Q. Was there any explanation given to you as to the reason for the inclusion in the lease of that——

A. No.

Q. —privilege of termination?

A. No.

Q. Did you ask about it?

A. I didn't.

Q. Did you discuss the terms of the lease at all?

A. Well, I have been familiar with the service station business for a good many years. I practically knew what was expected of us.

[fol. 1509] Q. What was expected of you?

A. Expected to follow the Richfield program and policies in regard to merchandise in their service stations.

Q. Did those policies include maintaining the station open for a sufficient number of hours to produce the necessary business in comparison with the stations in the area?

A. That's true.

Q. And maintaining the necessary help?

A. That's true.

Q. Was there any mention made of uniforms you were required to wear?

A. Yes.

Q. Did you borrow any money from Richfield at the time?

A. Yes.

Q. How much?

A. I borrowed $800.

Q. What did you use that for?

A. I used it to make the final payment to Don McCombs, who I had purchased the station from.

Q. You mean the inventory of merchandise, and the tools and equipment; is that correct?
A. Yes.

Mr. DeMartini: I think that is all.

[fol. 1510] Redirect examination.

By Mr. Hall:

Q. Mr. Rhodes, when you borrowed this $800 from Richfield, did you sign a note to them for it?
A. Yes.
Q. And you paid that note back to them, of $800?
A. Yes.
Q. That $800 note also included a $50 service fee that Richfield charged you for loaning you the money; is that right?
A. Yes.

Mr. Hall: That is all, Mr. Rhodes.
The Court: You may be excused.
Mr. Hall: Thank you very much.

(Witness excused.)

Mr. Hall: Mr. Cooper.

Eugene W. Cooper, called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination:

The Clerk: What is your name, please?
The Witness: Eugene W. Cooper.
The Clerk: Eugene W. Cooper. Thank you.

[fol. 1511] By Mr. Hall:

Q. Your name is Eugene W. Cooper?
A. Yes, sir.
Q. Where do you reside, Mr. Cooper?
A. 2830 San Fernando Road.
Q. I didn't hear that address.

A. 2830 San Fernando Road.
Q. San Fernando Road where?
A. Right here.
Q. You previously lived in Bremerton, Washington?
A. Right; yes, sir.
Q. Did you operate a service station in Bremerton which you leased?
A. Yes, sir.
Q. When did you go into that station?
A. The 1st of June, '49.
Q. When did you leave the station?
A. Approximately the 3rd of June.
Q. When you went into this station, did you execute a lease——
A. Yes, sir.
Q. —with the Richfield Oil Corporation to lease this property from them?
A. Yes, sir.
Q. I will hand you this document which is entitled [fol. 1512] "Service Station Lease," on Form 542, with a print date of 1-49, and ask you if that is the lease which you signed with the Richfield Oil Corporation.

[fol.1513] Mr. Hall: The lease is dated June 1st, 1949. I will ask counsel to stipulate that this may be considered as a lease similar to that of Government's Exhibit 1-G.
Mr. Paradise: Yes, it is on the identical form. So stipulated.
Mr. Hall: It is on the identical form.

Q. Who did you first negotiate with relative to renting this station?
A. The agent, Mr. Summers.
Q. Is that Mr. George Summers?
A. George Summers, yes, sir.
Q. And where was he?
A. At the office.
Q. His place of business in Bremerton, you say?
A. Yes, sir.
Q. Is he the commission agent and TBA?
A. Yes, he is.
Q A distributor for Richfield?
A. Yes.

Q. Before this lease was signed what discussion did you have with George Summers about the operation of the station?

A. Well, hardly any discussion, except that I wanted the station and the operator in there was not doing a good job, and he figured I could do better. That was about the sum [fol. 1514] and substance of it.

Q. And you agreed upon the terms?

A. Yes, sir.

Q. You were to pay?

A. Yes, sir.

Q. Those terms were $50 a month plus one cent over 5,000 gallons, is that correct?

A. Yes.

Q. Do you know what the station was pumping at that time and before you went into it?

A. Right around 6700 or 7100, roughly.

Q. Per month, that is gallons per month?

A. Yes, sir.

Q. Of gasoline?

A. Yes, sir.

Mr. Paradise: I did not hear the witness answer, Mr. Bargion, of the amount.

(Answer read by the reporter.)

By Mr. Hall:

Q. Did you ever have any discussions with Mr. Summers or any other Richfield representatives relative to the products that you were handling there?

A. Well, nothing definite.

Q. Well, did they ever make any complaint to you about any products that you were handling?

A. Well, there were complaints about MacMillan, Mac- [fol. 1515] Millan oil, for one thing.

Q. Now, tell us about the MacMillan oil matter.

Mr. Paradise: Will you speak a little louder, please, Mr. Cooper? We have difficulty hearing you here.

A. Well, the last load of MacMillan oil came just at the time that Mr. Summers drove past the station. He stopped

and said he didn't like the looks of the MacMillan truck in front of the station and didn't like the idea of selling MacMillan oil. I didn't display the oil, and put it in Richfield containers or cartons to keep peace with the family.

Q. Did Mr. Summers also go to the truck driver and make any complaints to him?

A. Well, yes.

Q. What did he say? That is, the truck driver of the MacMillan Oil Co. I am speaking of.

A. Yes.

Q. What did he say to him?

A. Well, it made me mad, naturally. He said he wants to know what I was going to pay it with.

Mr. Paradise: I can't hear you, Mr. Cooper.

A. He said he wants to know what I was going to pay the oil with.

By Mr. Hall:

Q. Who did he direct that question to?

A. The MacMillan oil truck driver.

Q. The MacMillan oil truck driver?

[fol. 1516] A. Yes, sir.

Q. Do you recall any other statement?

A. I think the answer was——

Q. I am not asking you for the reason. Tell us what he said in substance.

The Court: Just tell us what he said.

A. Well, at the time, that was—I don't recall any other statement he made at the time.

By Mr. Hall:

Q. Anyway, he made that statement that you just repeated to the MacMillan truck driver?

A. Yes, sir.

Q. Did you ever have any further trouble with him about MacMillan oil?

A. No, not about MacMillan oil.

Q. Well, did you ever have any trouble about any other products or accessories?

A. Yes.

Q. What?

A. One day in particular he came in the station and rolled up his sleeves, and he said, "I am mad." He said, "I don't like any of this stuff around the station, these other products."

Q. What other products did you have at the station that day?

A. Well, there was Bowes Seal-Fast AHB dry patch and —well, items like that, you know, that were not handled by [fol. 1517] the agent.

Q. They were goods that he did not sell?

A. That is right.

Q. Go ahead.

A. But his stock was so depleted that you couldn't get anything, anyhow, from him, and you had to get it from where you could.

Mr. Paradise: I move to strike that as a conclusion of the witness and object to it as not conversation.

The Court: All except the words "the stock was depleted."

Mr. Paradise: Pardon me?

The Court: Strike all after the words "the stock was depleted."

By Mr. Hall:

Q. What else did he say to you at that time?

Mr. Paradise: I object on the ground of lack of foundation, if the court please. We have not fixed the time or place of this conversation.

The Court: Yes, fix the time and place.

By Mr. Hall:

Q. When was that, do you remember, approximately?

A. Well, let's see. I know it was in the summertime and I don't remember just what date.

The Court: What year?

By Mr. Hall:

Q. Was it 1950 or 1949?

A. Well, I believe it was in '49.

[fol. 1518] Q. And did Mr. Summers come into your station very frequently?

A. Oh, I would say once a week.

Q. Once a week?

A. Yes.

Q. He lived and operated within a very short distance from your station?

A. Well, he drove by there twice a day. He lived past my station.

Q. Did you ever have any particular Laher batteries?

A. Yes, I did, some Laher and Auto-Lite, both.

Q. What about them?

A. Well, I called the plant to get a reverse assembly battery.

Q. What plant?

A. The Richfield plant.

Q. Yes.

A. And no one there knew what I was talking about.

Q. What did you call them?

A. A reverse assembly battery.

Q. A reverse assembly battery?

A. Yes.

Q. Is that a particular kind of battery that the terminal posts are arranged differently than other batteries?

A. Yes, sir. They are just the opposite of any other [fol. 1519] battery. So having made the sale, I went down to pick up a couple.

Q. You called up Richfield and they could not supply it, is that right?

A. Right.

Mr. Paradise: I think we should have a better foundation for these conversations.

By Mr. Hall:

Q. When was this?

Mr. Paradise: And with whom he talked.

A. Well, that was in the wintertime. I remember we were selling quite a few batteries.

By Mr. Hall:

Q. That would be in the winter of 1949 or 1950?
A. Yes, the winter of '49.
Q. And you called whom?
A. At the time?
Q. Yes.
A. I called the plant, yes.
Q. Who did you talk to? Did you call Summers?
A. I called the plant but I don't remember just who I talked to.
Q. But it was the Richfield——
A. A representative there, whoever it was.
Q. It was the Richfield distributor that you called?
A. Yes, sir.

[fol. 1520] Mr. Paradise: I object to conversations and testimony of this sort. This would be impossible for the purpose of rebuttal without a further foundation as to with whom he talked and when he talked.

The Court: Well, of course, he was asked the questions and he is trying to remember as to when it was and if he knew the person to whom he was talking.

Mr. Hall: It is not particularly important, anyway, your Honor, as far as who he talked with.

Q. You did not get a battery from them?
A. Definitely not.
Q. Did you purchase one of these batteries that you needed?
A. I purchased one, and while I was there I picked up four others.
Q. And from whom?
A. From 1204 Park Avenue.
Q. Another distributor?
A. No, it was a garage actually.
Q. A garage?
A. Yes.
Q. Were they in any way connected with Richfield?
A. Definitely not.
Q. What was the make of the battery?
A. Well, I picked up, I believe, three Lahers and one Auto-Lite.

[fol. 1521] Q. What was the last one?

A. Auto-Lite.

Q. Auto-Lite?

A. Yes.

Q. Did you have any difficulty with Mr. Summers or any other Richfield representative about the purchase of those batteries?

A. Well, yes. In the fall, when he came in about these pie salesmen parking their trucks in front of the place.

Q. We will come back to the pie salesmen. Now, finish up about what happened about these batteries.

A. Well, he goes all around the station pointing out the things he doesn't like and that was one of them.

Q. What did he say to you?

A. Well, he would like to have me buy his batteries, but he didn't have a good battery in the place.

Q. Did he say anything else to you at the time?

A. Not regarding batteries, no.

Q. What about this pie wagon? By the way, what is a pie wagon?

A. Well, he refers to any salesman with a panel a pie wagon.

Q. Those are salesmen of what, accessories?

A. Any accessories or parts.

Q. They call around service stations?

[fol. 1522] A. Yes, sir.

Q. And have the goods right on the wagon?

A. Yes, sir.

Q. That is what you call in the trade a pie wagon?

A. That is what he calls a pie wagon, yes.

Q. What was his objection to that?

A. Well, it——

Q. What did he state to you about that?

A. He didn't want these fellows with these aforementioned pie wagons stopping on his property and selling the dealers any of their products.

Q. On his property?

A. Well, I mean not actually his property, but on these stations.

Q. As a matter of fact isn't he the owner of the property?

A. Yes, he is.

Mr. DeMartini: I object to that as asking for the conclusion of the witness.

The Court: No, if he knows.

By Mr. Hall:

Q. Do you know whether or not Mr. Summers and his wife had leased this property to Richfield?

A. Yes, sir.

Q. And you acquired your lease from the Richfield Oil Co.?

A. Yes, sir.

[fol. 1523] Q. Was there something said to you about the placing of your name on the station?

A. Yes. About a month after I had taken over, I suggested putting my name on the canopy and the representative—I don't remember who it was, whether it was Summers or the field man—but anyhow, he suggested that I did not put my name on the station.

Q. You said that when you went in there your gallonage was about 6,000 gallons, roughly?

A. Yes.

Q. And during the second month——

Mr. Paradise: He said, "6700 to 7100," Mr. Hall.

Mr. Hall: Yes, I was wrong. I did not actually remember.

A. Actually, I believe it was 6700 the end of the month.

Q. At the end of the second month from this time when you wanted to put your name up on the station what gallonage were you pumping?

A. It was over 13,000 in the month of July.

Q. And that increase had been through your personal sales solicitation?

A. Well, I egotistically think so, yes.

Q. How long have you lived in that community?

A. Well, I was born there, lived there all my life.

Q. When you took the station over did you have to pur-

[fol. 1524] chase some equipment and inventory?

Mr. Paradise: Object to the question as calling for the conclusion of the witness. I think that this witness has shown so far that he need not be led under each question.

The Court: Yes.

Mr. Hall: I asked just an open question whether or not he did, your Honor.

The Witness: The question, again?

The Court: Go ahead.

By Mr. Hall:

Q. Did you have to purchase any stock or inventory or equipment when you leased this station?

Mr. Paradise: The same objection.

The Court: Overruled.

Mr. Hall: Go ahead.

A. Well, I did, yes.

Q. Who did you purchase that from?

A. I bought the stock from the Richfield, Richfield agent.

Q. Who did you purchase your equipment from?

A. A broker in Seattle, Rothwiler.

Q. About how much did this equipment cost you?

A. About three—oh, I would say $350.

Q. About $350. That included what, principally?

A. Well, there were three lubsters, a grinder, a tire patch or a tube vulcanizer. That is about all.

[fol. 1525] Q. What were the hours that you kept that station open?

A. Well, originally, about 7:00 in the morning until 1:00 in the morning. It was a highway station and we figured we could make a go of it.

Mr. Paradise: Mr. Cooper, we can't hear you. I am sorry.

The Witness: I am sorry, too. About 7:00 in the morning until 1:00 in the morning.

Mr. Paradise: Thanks.

By Mr. Hall:

Q. Did you have to hire anyone to assist you in running that station?

A. Oh, yes, yes.

Q. And did you pay social security taxes on these men that you hired?

A. Yes, sir.

Q. These little door stickers that are placed on a car to

indicate when it was lubricated and the oil changed, did Richfield furnish those to you?

A. No, sir, no, sir.

Q. Did they have Richfield's name on there?

A. Definitely.

Q. Did you have to pay for them?

A. Yes, sir.

Q. How much did you have to pay for them?

A. The books were about three for 25 cents.

[fol. 1526] Q. And were there also some charts that you had to fill out?

A. Well, on the lube charts, yes.

Q. Lube charts?

A. Yes.

Q. Were they furnished by Richfield or did you have to purchase them?

A. No, we had to buy them.

Q. From whom?

A. Richfield.

Q. From Richfield?

A. Yes, sir.

Q. What about the customers' cards and file box in which they were kept?

A. Had to buy those, too.

Q. you had to buy those from whom?

A. Richfield.

Q. From Richfield. What about your bookkeeping equipment?

A. Well, I had to purchase that.

Q. That was not furnished to you by Richfield, was it?

A. No, sir.

Mr. Hall: You may take the witness.

[fol. 1527] Cross-examination.

By Mr. Paradise:

Q. Mr. Cooper, I understand that you went to Richfield and solicited the right to use this station, is that correct?

A. Right.

Q. And had a conversation with Mr. Summers as to the terms on which you would be permitted to occupy it?

A. Yes, sir.

Q. Mr. Summers explained to you, did he not, that you would be permitted to occupy this station upon condition that you operated and maintained it in the manner directed by Richfield; is that correct?

A. Yes, sir; right.

Q. You understood at the time you signed this lease that there was a 24-hour clause in it?

A. Yes, sir.

Q. Did you have any conversation with Mr. Summers concerning the reason or purpose for that clause?

A. No, sir.

Q. Did Mr. Summers explain to you that the purpose of that clause was that if your operations were unsatisfactory that Richfield would be in a position to remove you?

A. Well, it is understood if a fellow has sold enough gasoline that you would continue to operate it. I liked it myself, because I could get out as soon as I wanted.

[fol. 1528] Q. Who was the operator of that station before you moved in?

A. Ed Minter.

Q. What was his name?

A. Ed Minter.

Q. You understood that he was not doing a good job in the station, is that correct?

A. Yes.

Q. Did you understand that from Mr. Summers?

A. Pardon?

Q. Did Mr. Summers inform you of that?

A. Well, it was understood between us. I could see it. Anyone could see it.

Q. The rent which you have paid during the time you occupied that station was one cent per gallon, I think?

A. $50 a month plus one cent a gallon.

Q. Well, it was $50 a month plus one cent a gallon over 5,000 gallons, is that correct?

A. Right.

[fol. 1529] Q. The amount of gallons that you sold never went below 5,000 gallons?

A. Never did, no.

Q. Then the rent you paid figured on a gallonage basis was never more nor less than one cent per gallon?

A. That's right.
A. That's right.
Q. Am I correct?
A. That's right.
Q. This equipment that you said you bought, you didn't buy that from Mr. Minter, the former occupant, did you?
A. I took over a contract he was paying on.
Q. Did Mr. Summers tell you the type of equipment he wanted you to have if you were to occupy the station?
A. No.

Mr. Paradise: No further questions.
Mr. Hall: That is all, Mr. Cooper. Thank you very much.

(Witness excused.)

Mr. Hall: Mr. Harold Pierce.

[fol. 1530] Harold E. Pierce, called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination:

The Clerk: What is your name, please?
The Witness: Harold E. Pierce.
The Clerk: Harold E. —— how do you spell your last name?
The Witness: P-i-e-r-c-e.
The Clerk: Thank you.

By Mr. Hall:

Q. Where do you reside, Mr. Pierce?
A. 340 West 87th, Seattle.
Q. In the State of Washington?
A. Seattle, Washington.
Q. What is your present business?
A. I am a service station operator.
Q. Whose products do you sell now?
A. Texaco.
Q. Texaco. Did you operate a service station at 8555 Greenwood Avenue, in Seattle, Washington?

A. Yes, I did.

Q. You were the lessee of that station?

A. Yes, sir.

[fol. 1531] Q. When did you go into that station, do you recall, Mr. Pierce?

A. September, about 1943-'4. I don't recall exactly.

Q. I will hand you a document entitled, "Richfield Oil Corporation Service Station Lease," on Form 542, with a print date of February, 1944, and ask you if that is the lease which you executed at the time you went into the station.

A. That's my signature, yes. That appears to be the lease.

Q. That lease is dated when?

A. September 25, 1945.

Q. Would you say that——

A. Now, just a minute, please. The thing about this lease, when we went in here——

Mr. DeMartini: Will you speak up, please, so that we can hear you?

The Witness: Pardon me?

Mr. DeMartini: Speak so that we can hear you.

By Mr. Hall:

Q. I will ask you questions about it. Just a moment here. Would you say that is the date you went in, approximately?

A. Yes, sir.

Mr. Hall: Will counsel stipulate that this lease which he executed is the same as Government's Exhibit 1-E?

[fol. 1532] Mr. Paradise: No, I can't do that, Mr. Hall, though I can stipulate it is a form attached to Defendant's Exhibit A, which is the stipulation concerning forms.

Mr. Hall: 2-44 is the same.

Mr. Paradise: Oh, yes, that is Government's 1-E. I thought it was a different print date.

By Mr. Hall:

Q. Did you have any discussions with any Richfield representatives before you went into this station?

A. Yes.

Q. With whom?

A. Mr. Mumford, and I just can't think of the second man's name now, but they didn't have merchandisers at the time I went in, and they had another man who was working as a real estate man for the Richfield Oil Company.

Q. Do you recall his name?

A. I would remember it if I heard it, but I just don't remember it now.

Q. Well, you talked to these gentlemen about leasing this property?

A. Yes, I did.

Q. Was there any discussion had at that time as to what products you should sell?

A. I was not told that I had to sell or could not sell any other brands.

[fol. 1533] Q. You were told that at the time?

A. No, sir.

Q. Was that told you subsequently after you went into the station?

A. Yes, it was. Incidentally, I went into that station in a partnership form.

Mr. Paradise: I move to strike any volunteered statement of the witness.

The Court: That may go out.

By Mr. Hall:

Q. I will ask the questions, Mr. Pierce. Was this station operated before you went into it?

A. Yes.

Q. Did you have to pay anything for the equipment when you went into the station?

A. Yes, my partner and I bought——

Q. About how much money did you pay?

A. —the former's equipment and merchandise. Approximately $1500 all together.

Q. And you occupied this station then from the 25th of September until what date?

A. Until the 24th of December, 1949, I believe.

Q. 1949. Then when you gave up this station where did you go?

A. I leased a Texaco station right across the street from this station.

[fol. 1534] Q. Right across the street from this station?

A. Yes, sir.

Q. And is that the station you are in presently?

A. I am still there, yes.

Q. Now, did you have any difficulties with any of the Richfield representatives relative to the products which you were handling?

Mr. Paradise: I object to the question. It calls for the conclusion of the witness.

The Witness: I didn't hear you, sir.

The Court: I will sustain the objection.

By Mr. Hall:

Q. Did any Richfield representatives ever make any statements or complaints to you about any of the products which you were handling?

A. Yes, on several occasions.

Q. Will you tell us the first one, and what it was about?

A. At one time several Richfield representatives came into the station, walked all through it, and searched the station without any apparent reason. They went into drawers, desk drawers, opened doors, and look in there. They found—on this occasion they found some MacMillan oil, which I was carrying in stock for people who had requested it, and some Auto Lite spark plugs, and they told me they didn't like to have me handle those products, and they said I should keep them out of sight, that I [fol. 1535] could not advertise them, although, in my opinion, they were at least as good as the other products that Richfield sold me.

The Court: You told them that? Did you tell them that, in your opinion, they were?

The Witness: Yes, sir.

The Court: All right.

The Witness: So they said it probably would be all right to sell them, but to keep them out of sight, and do not advertise them.

On another occasion I had some Triton oil in stock for a couple of customers who wanted it, and I was told that

I should not sell that product, but it probably would be all right if I kept it out of sight, and do not advertise it.

On a third occasion I had some Western oil sitting in a small drum, a container, about a 15-gallon container with no name on it, which I was selling at that time two quarts for 25 cents. I was selling that oil to people who would drive in and ask for two quarts of cheap oil, of some Western oil. Richfield oil was selling at 15 or 20 cents a quart at that time, for a comparative oil. When they saw that, they just raised the roof. Mr. Elslip——

Q. Mr. Elslip was the merchandiser at that time?

A. Yes, sir. He just raised the roof, and said, "You will have to get this oil out of this station immediately, or [fol. 1536] we will cancel your lease."

I tried to persuade him, and argue with him, said I wasn't breaking any laws or doing anything I considered wrong, but I was told I was to get it out of there fast, or I would be canceled in 24 hours or less.

Q. Did you ever have any trouble with any of these Richfield representatives about any signs you had on your station?

A. On several occasions. It seems——

Q. What did they tell you to do with the signs?

A. I was told to take them down, remove them, not display them, although any time that Richfield felt like doing it, they felt free to come out and put up any signs and as many signs in my windows as they wanted to, and leave them up as long as they wanted to. It didn't seem to me it was fair, because I was paying rent for the premises.

Q. Did they put up Goodyear signs on your property?

A. Yes.

Q. Did they have these decals put across the top of your windows, advertising products?

A. Yes, they did, all around the entire sales room.

Q. Did they also have a metal Goodyear sign hanging from a post?

A. Yes, they did, hanging from a light post on the corner. [fol. 1537] Q. Did you ever attempt to place any signs advertising any products other than Goodyear out in front of the station?

A. On one occasion I put a sign in the front office win-

dow, facing the gas and oil, advertising Champion spark plugs, or Richfield's own products, and I was told to take it down, it was an unauthorized sign. I was never told what was authorized or what was not, but, in my opinion, it appeared to me that anything I put up was not authorized.

Q. Did you also attempt to do some repair work on the premises, minor motor tune-ups, and minor repairs?

A. Yes. I was told I should not do automobile repairing in any capacity, that the company frowned on it very much, on having me do any brake relining, or any motor tune-ups, or any other kind of repairs. They said it would get my hands dirty, and it was not pleasant to the sales trade or customers. It is impossible to do any repair work without getting your hands dirty.

Q. When you gave up the station, Mr. Pierce, did you meet with any difficulties on the part of Richfield officials in disposing of your equipment which you had purchased when you went in there or during the time that you were operating there?

Mr. Paradise: I think that calls for the conclusion of the witness. I would like to have a foundation laid.

[fol. 1538] By Mr. Hall:

Q. When you gave up the station, did you sell to the new lessee all of the equipment which you had in the station?

A. No, a very, very small part of the equipment I had in the station, and very little merchandise. It was a farce.

Q. Tell us the circumstances?

A. I had at the time that I sold that station,—I would estimate I had about $4500 to $5,000 worth of stock and equipment, and he was in a few days before that, when I was asked to sign a release on the lease, which I did, thereby cutting my own throat.

Mr. Paradise: I move that last statement of the witness be stricken.

The Court: Yes, that may be stricken.

By Mr. Hall:

Q. Go ahead, Mr. Pierce.

The Court: Tell us what you did.

The Witness: Nevertheless, I signed this release, and the oil company's representative brought a man and his wife out to look at the station, a prospective buyer. They looked it over, and they talked it over among themselves, and finally came back and decided to buy. We agreed upon an hour, the following day I believe it was, and they came out and started the sale.

The merchandisers, of which there were something like [fol. 1539] four present, checked over every item in the station, kind of looked at all the windows to see if there were any broken windows, any damage done to the property, tested the air compressor and hoist, and everything that belonged to Richfield, and found them all satisfactory.

Then we started the sale, which was actually an auction. I was given—I had no one with me. I had no power to—in other words, it was actually that I had to take what he offered me, or leave it.

By Mr. Hall:

Q. "What he offered you," what do you mean?

A. What the prospective buyer, the new buyer, Mr. Lynch was his name, offered me.

Q. Was he being advised during this period by the Richfield representatives as to what price he should pay?

A. He was being advised by his son, who was another Richfield dealer at another station, at another Richfield station.

Mr. Paradise: I object, your Honor. Mr. Pierce, will you delay answering the questions until I have an opportunity to object, if I see fit.

The Witness: O.K.

Mr. Paradise: What was the last question, please?

(The question was read.)

The Court: I will sustain an objection to that question. [fol. 1540] He may describe what was being done.

The Witness: Well, we would choose a certain product

on the shelf. For instance, maybe on one occasion it was Rislone, which is a tune-up oil. And he says—well, Mr. Lynch's son says, "I never use that product in my station. Do you want to buy it or not, dad?"—to Mr. Lynch, the elder.

So, in other words, it appeared to me that he was suggesting that he would not buy it.

Mr. DeMartini: I move to strike that, your Honor.

The Court: Strike that out. What followed that, when he made that remark? What did the father say?

The Witness: Well, he said, "No, I guess I won't take that." Then there was Carbout brought up, and I asked if he wanted to buy the Carbout. In other words, they were given an opportunity to buy each and every item, or not to buy, as they chose. I had——

By Mr. Hall:

Q. When the sale was all over, was there a considerable amount of equipment or merchandise, or both, that you had to take away with you, that was not sold?

A. Almost everything. Practically the only thing that they bought was the gasoline, the oils, the greases, and fan belts, and a few tires.

Q. Do you have some of those items still unsold?

A. I still have most of the most expensive equipment, [fol. 1541] which I have been unable to sell.

The Court: Those were not on the list approved by Richfield? Or, were those things you had received from Richfield?

The Witness: Those are things I had bought elsewhere, but they were my property. I wanted to sell them.

The Court: In other words, the items that you yourself had bought they were not interested in buying from you? Is that the idea?

The Witness: Yes.

The Court: All right.

By Mr. Hall:

Q. Just one other question. Those were all items that you used in the operation of that service station which you had leased, were they not?

A. Yes, they were.

Q. I note in looking at your lease, Mr. Pierce, that originally, when you went into this property in 1945, you agreed to pay $50 a month flat rent, plus one cent over 5,000 gallons; is that correct?

A. That's correct.

Q. Just to show you here, to make sure of that (showing document to witness). It that right?

A. Yes, I believe that's right.

Q. Then by an amendment to the lease on the 12th day of February, you agreed to pay $100 per month flat rent; [fol. 1542] is that correct? Here is the $100, (indicating) the 12th of February, '48.

A. Yes, that is my signature, so it must be correct. I vaguely remember that, but I think it was canceled.

Q. Then on the 21st day of September, 1948, you agreed to pay $40 per month and one cent over 4,000 gallons; is that correct?

A. I don't recall that.

Q. The 21st of September, 1948?

A. It must be correct, though. There is another item here that you haven't asked me about: Why is there only one signature?

Mr. Hall: That is all right. That doesn't make any difference. Your witness.

Cross-examination.

By Mr. Paradise:

Q. Mr. Pierce, how did you come to be interested in this particular station? Now, I am talking about the Richfield station, not the Texaco station.

A. I understand. Originally I started out and went to several oil companies, Shell, Richfield, and several others, and applied for a service station to lease.

Q. I see.

A. And eventually I got a phone call from someone in [fol. 1543] Richfield to come down and see them, they thought they had a service station I might be interested in.

Q. Prior to that time had you ever operated a service station?

A. I had worked in service stations for many years previous to that, but never before operated any.

Q. You were never before established in business in a service station?

A. That's right.

Q. And you applied for this service station?

A. Yes, I did.

Q. At the time you responded to Richfield's call, you knew that Richfield owned this station?

A. No. I assumed they owned it.

Q. That is what I meant.

A. They didn't own it, I found out later.

Q. You mean they didn't have title?

A. They were leasing the station from another party who owns it.

Q. But Richfield had a lease on it; is that correct?

A. Yes, sir.

Q. Now, at the time you went or as soon as you went into the station, what gallonage did you commence performing?

A. I couldn't say exactly. The previous owner had been very much mismanaging the station. They were closing it [fol. 1544] at 6:00 P. M. and opening at 9:00.

Q. When you say "the previous owner," you mean——

A. The owner I bought from.

Q. The tenant of the station?

A. Yes. And their gallonage was down quite low, I believe around, oh, maybe 2500 a month, something like that.

Q. With whom did you talk when you went into this station?

A. A Mr. Mumford, and I don't recall the other gentleman's name.

Q. Did Mr. Mumford tell you that he was dissatisfied with the performance of the previous operator?

A. I believe he did.

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Q. Now, what was the gallonage when you went in, that is to say, what gallonage were you doing?

Mr. Hall: When he went in?
The Witness: At what time?

By Mr. Paradise:

Q. Well, shortly after you started your own operation?
A. Well, it went right up. It eventually reached 12,500 a month, which is about the most it ever pumped, I have been told.

The Court: How long did you have the station?
The Witness: I was there four and a half years.
The Court: You worked it up? You built it up, didn't [fol. 1545] you?
The Witness: Yes, indeed.

By Mr. Paradise:

Q. Did you request this reduction in rent that was made on September 21, 1948?
A. I couldn't truthfully say. I don't remember it right now. I just don't remember.
Q. Well, do you remember what the gallonage of the station was at the time of this rental amendment of September 21, 1948,—at the time it was made?
A. I don't remember the gallonage.
Q. Well, approximately what were you pumping along at that time?
A. '48? Well, I would make a guess at probably 10,000 gallons, something like that.
Q. Do you have any recollection of the circumstances at the time this rental reduction or change was made on February 12, 1948, when the rental was changed from $50 a month plus one penny over 5,000, to a flat rental of $100 a month? Do you recall the circumstances of that change?
A. No, sir, I don't.
Q. Isn't it correct that at the time that change was made you were pumping in excess of 10,000 gallons per month, with the result that putting you on the basis of $100 a month flat rental amounted to a reduction in your rent?

[fol. 1546] Mr. Hall: Your Honor please, I don't believe that is at all pertinent to the issues here in this case.

The Court: No, that is all right. Go ahead.

The Witness: I couldn't answer you definitely.

Mr. Hall: It was not a reduction in rent, in the first place. That is the wrong assumption on the part of counsel, that it was any reduction in rent, because there is a minimum that has been raised from $50 to $100, which was the minimum amount he was to pay.

The Court: All right. Go ahead. You may answer, if you can. Can you answer the question?

The Witness: No, I can't answer the question.

By Mr. Paradise:

Q. At $100 a month, if it were less than 10,000,—put it this way: If you were pumping 10,000 gallons per month, and not over, the change of the rent to $100 a month would amount to a reduction in rent, would it not?

Mr. Hall: That is purely argumentative and speculative.

The Court: It is argumentative. I will sustain the objection.

Mr. Paradise: I presume it is. I was just correcting counsel's statement.

The Court: Assuming it was a flat rent and he was pumping over, it would be a reduction. If he was pumping less, it would be an increase.

[fol. 1547] Mr. Paradise: I agree with your Honor. My statement was incorrect. If he was pumping more than 10,000 gallons, as I understood he was, it would have been a reduction.

The Court: As I understood the basis, the basis is on a minimum. Then above that they pay one cent a gallon. That is what the pattern is.

Mr. Paradise: Yes, but without duplication. There is no overlapping.

The Court: All right.

By Mr. Paradise:

Q. Do you have any recollection of the circumstances of this rental amendment that was made in September of 1948, when there was a change from a flat rental of $100 a month,

to a rental of $40 a month and with a penny a gallon over 4,000 gallons.

Mr. Hall: Your Honor, that question has already been asked and answered.

The Court: Overruled. You may answer.

The Witness: It seems to me I do recall something about that; that Richfield came out and told me if I would leave all my lights on in the station, every light in the station on, from the hour of opening until the hour of closing, regardless of how light or dark it may be, that they would put me on this rate, and that would take care of the additional light bill.

The Court: What time of the year was it?

[fol. 1548] The Witness: I don't recall, sir.

The Court: It doesn't get so dark early.

The Witness: That is all right, but we didn't need the lights on. I suppose it was an advertising idea on the part of Richfield to attract attention.

The Court: To attract attention. I see.

The Witness: If I remember right, that was the reason for the change in rent.

By Mr. Paradise:

Q. Do you recall whether you requested this change in rent or whether Richfield came out and told you about it?

A. I believe they approached me with the idea. I couldn't swear to that statement.

The Court: Had they expressed any dissatisfaction before as to what you were doing in the station

The Witness: No, not that I recall.

The Court: Isn't it true that you were working at building it up at that time? Hadn't you been building it up gradually over the years?

The Witness: Yes. I worked very hard at that station.

[fol. 1549] The Court: Well, did they tell you when they did that as to why they wanted it? Did they complain that possibly you were not getting your share of patronage in the neighborhood or what, or did they just come and say to put in the light?

The Witness: They offered it as a plan.

The Court: What?

The Witness: They offered it to me as a plan for the station, if I remember correctly.

The Court: How long had you been running the station?

The Witness: Oh, a term now of three years. I operated the station as a partner. That has never been brought out in this trial. I went in there with a partner to start with.

The Court: Well, that is not a very important fact. I am glad you told us that you had a partner.

The Witness: Yes. So they would come out with various plans at various times, offering to sell us advertising or various things. This was one of them, and they want us to leave the lights on from 7:00 a. m. to 10:00 p. m., the hours that I operated.

By Mr. Paradise:

Q. Prior to that time what hours did you operate?

A. I always operated from 7:00 a.m. until 8:00 or 9:00, and in the summertime until 10:00 p. m. except on Sunday.

Q. Then this change was to keep it open an extra hour during the winter?

A. No. No, this change in rent, if that is what you are [fol. 1550] still talking of——

Q. No. I mean this change of hours.

The Court: I do not think he said a change of hours.

A. In the wintertime we closed an hour earlier at night because there was not much business after 9:00 o'clock at night. In the summertime we stayed open an extra hour.

The Court: How did you divide your time between you and your partner?

A. Well, we would alternate weeks. I would work one or two weeks from 7:00 a.m. until 6:00 or 7:00 at night, and then my partner would work the morning shift and I would work the late shift. We had hired help in addition to that.

The Court: How many persons did you employ besides yourself?

The Witness: At various times, from one to two, sometimes two men and a part-time man.

The Court: All right.

By Mr. Paradise:

Q. Mr. Pierce, what merchandisers did you talk to concerning this station besides Mr. Mumford during the period of time you occupied the station?

A. I couldn't remember all their names. There was Mr. Plumb.

Q. A Mr. Plumb?

A. There was a Mr. Elslip, there was a Mr. Robert Weston, there was a Mr. Harold Gross. They changed too fast. I believe there were some others but their names [fol. 1551] don't come to me at present

Q. Which one of these men that you have just mentioned including Mr. Mumford—which one of them, if any, explained to you the matter of the proper use of Richfield's credit cards?

A. I don't recall that any of them did that. At some time or another they would have a general meeting, usually in a hotel downtown, and give us a dinner and bring up various subjects. At that time they very often would bring up a subject about credit cards.

Q. You are familiar, are you not, with the fact that Richfield has credit cards?

A. Yes, indeed.

Q. You are familiar with the fact that motorists buy gasoline from service stations on credit terms?

A. That is correct.

Q. And sign a credit ticket?

A. Yes, sir.

Q. And, as the service station operator, you use that ticket as a means of your buying gasoline with it from Richfield and it is the equivalent of cash?

A. Correct.

Q. And that Richfield stands the credit loss on that customer if there is any credit loss?

A. Not entirely.

[fol. 1552] Q. What?

A. Very often Richfield has come back to me, say, with $30 and with $50 for credit card charges that the customer had left us to pay, and they come out to me and demanded the cash right now, and got it, although I had never signed an agreement to that effect.

Q. Now, Mr. Mumford, didn't you——

Mr. Hall: May I again advise counsel that this is Mr. Pierce who is on the stand, neither Mr. Mumford nor Mr. Cooper.

The Court: You have changed them so often.

Mr. Paradise: Forgive me, Mr. Pierce. I am very sorry.

The Court: They are all nice people.

Mr. Hall: I have not met Mr. Mumford and I can't concede that, your Honor.

The Court: All right. Go ahead.

By Mr. Paradise:

Q. Isn't it a fact, Mr. Pierce, that every credit ticket that was returned to you covered a matter of automotive accessories or lubricating oil—I will withdraw that. Isn't it a fact that every credit card that was returned to you and which covered lubricating oil represented a sale by you of lubricating oil other than Richfield's lubricating oil?

A. No, not necessarily.

Q. I am not talking about necessarily.

The Court: At all, did it represent at all? Did it repre- [fol. 1553] sent products of others?

The Witness: It represented products that I sold. I couldn't say now, after several years, whether I had sold a quart of——

The Court: Did they explain to you why they picked out the particular credit to charge you with?

The Witness: Yes, they explained to me. They said the customer had refused to pay the bill or he hadn't been issued a new credit card, and I or some member of my employees had made charges on an expired credit card. That was the reason they came back and asked for the money. They never did——

The Court: You know, all credit cards have dates.

The Witness: That is right. They did not ever at any time tell me that they returned the credit card charge slip to me because I had sold the customer another brand other than Richfield oil. In no case did they.

The Court: Most of the credit cards run——

The Witness: Three months.

The Court: Three months?

The Witness: Yes.
The Court: But they expire, even the yearly ones, you see.
The Witness: I know. I have had that.
The Court: They expire, those are competitive cards.
The Witness: You have good judgment.

[fol. 1554] By Mr. Paradise:

Q. Is it not a fact—with whom did you talk about the matter of these returned credit tickets?

A. Well, Mr. Elslip on one occasion, or on more than one occasion, you might say. There was one occasion there where the company had made a mistake. Mr. Elslip was sent out to me to collect the money for several. He would walk into my station and say, "Here, Harold, you have made so many charges to this man. He was not issued a new credit card. The credit card had expired of his old credit card, and we want the amount of these slips," which came to about $30.00 or $40.00. Well, I argued with him and said he had been issued a new credit card. I was very careful to see those things when I made charges, and I was very careful. Occasionally my partner would make a slip. Well, I said, "Richfield does make mistakes." So I checked the man, and we walked over to this gentleman's place of business, to the gentleman who had made the charges and somebody—Mr. Black was the name—and I asked him if he would show us his credit card, which he did, and it was an up-to-date credit card. The office had somehow made a mistake and sent him a credit card when they shouldn't have done it or not intended.

The Court: What was the upshot of the thing?
The Witness: The upshot of the thing was, I didn't have to pay the bills that should have been charged to him. Some one made a mistake and sent the gentleman a credit card [fol. 1555] when they did not intend to, I presume.

By Mr. Paradise:

Q. So Richfield assumed the credit on it?
A. Richfield assumed the credit.
Q. Yes.
A. But if I hadn't been able to prove it, I would have had to pay it.

The Court: Well, give them credit for good intention when you showed them they were wrong. I know you don't like to do it, but you better do it.

By Mr. Paradise:

Q. Who else came out and brought credit memoranda to you and charged them back to you besides Mr. Elslip?

A. Well, I don't just exactly remember, but I believe Howard Gross on one or two occasions did.

Q. And were those also credit tickets on expired cards?

A. Yes, I presume they were. I had no arguments on those other cases, so I paid the money to Richfield and tried to collect it from the customers.

Q. Did you have discussions concerning the returned credit slips with anyone other than Mr. Elslip or Mr. Gross?

A. I can't say definitely whether I did or not. I presume I did. Every once in a while we would make charges to customers without seeing their credit cards. It is a standard [fol. 1556] practice in all service stations.

Mr. Paradise: I move that the witness' last statement be stricken as a conclusion of the witness.

The Court: All after the first sentence may be stricken.

By Mr. Paradise:

Q. Is it not a fact, Mr. Pierce, that credit card tickets were returned to you because they covered sales of Auto-Lite batteries which you carried in your station and which were not recommended by Richfield, and which you were instructed not to carry at the service station?

A. I do not remember any such slips being returned to me.

The Court: Well, let us put it the other way: Do you remember of actually charging a battery which was not something the station—an Exide—is that their battery? I have forgotten now.

Mr. Hall: No. The Goodyear battery was Richfield, your Honor.

Mr. Paradise. It is Goodyear's preferred.

The Court: Oh, it is Goodyear. Some mention was made there of a battery. Was it a Goodyear battery?

The Witness: Yes, sir.

The Court: Did you carry any others?

The Witness: On occasion I did, yes.

The Court: What brand did you carry?

The Witness: Any brand that I could get.

[fol. 1557] The Court: Do you remember at any time ever charging a battery when you had a Goodyear battery in stock, selling a different battery, let us say, an Exide or whatever they are, and charging it up on their credit slip?

The Witness: I presume I did, yes.

The Court: Did they ever raise any objection when the slips went through?

The Witness: I don't recall that they did for that reason, no.

The Court: On the battery would you put down the brand?

The Witness: I would put down "one new battery." I didn't write in the brand name.

The Court: Couldn't they tell by the price?

The Witness: No. Prices are very similar.

The Court: You were foxy. Is there such a difference in price?

The Witness: The prices all range very, very close now.

The Court: I beg pardon?

The Witness: The prices all range very close now. There was a very serious battery shortage shortly after I went into this station, if I may be permitted to say.

The Court: That is right. You went in right in the middle of the war?

The Witness: Yes. There were many times when my entire stock of batteries consisted of one. My partner and [fol. 1558] I would get out and scratch around and try to buy a battery so we could sell a battery.

The Court: Hustle?

The Witness: Well, we had to take what we could get, and be very glad to get that.

The Court: Did you ever have any trouble charging them on the credit slip?

The Witness: No, I don't recall any such case, your Honor.

The Court: All right.

By Mr. Paradise:

Q. That battery shortage did not continue for the four years you occupied the station?

A. No, it did not.

Q. There were plenty of batteries during the last two years of that period, weren't there?

A. Yes, and I sold lots of batteries.

Q. During that last two years you sold lots of batteries that were not Goodyear batteries or Richfield approved batteries?

A. No, I don't believe so. I never had any trouble with batteries. I sold Goodyear batteries and I sold lots of them.

Q. This matter of the sale of your equipment and merchandise at the time you moved out of the Richfield station, who were present on that date?

A. Mr. Lynch. I don't recall his initials. We will say [fol. 1559] the elder, and his son, Mr. Bert Lynch, who was advising his father and I understood was buying the station for his father and made him a gift of that or a loan.

Mr. Paradise: I move that the witness' answer as to what he understood be stricken.

The Court: Oh, no, no. That is his understanding. He has already testified that there were two people there, one of whom was the father and the other was the son.

By Mr. Paradise:

Q. When you say you understood he was buying the station, you mean he was buying the inventory?

A. The equipment.

Q. The inventory of gasoline and the inventory of oil at the station?

A. He was buying anything that he chose to buy from me.

Q. Put it this way, Mr. Pierce: You knew that Richfield continued to own the station buildings and the pumps?

A. That is correct.

Q. And the tanks and everything else that went into it. Mr. Lynch was not buying that?

A. No.

The Court: Of course, I know you have the feeling you got a raw deal, to use the language of the street, isn't that true, on that sale?

The Witness: To a certain extent, yes.

The Court: You understood when you went in there that [fol. 1560] if they wanted to get that away, they could do it on very short notice, didn't you?

The Witness: Well, I really understood when I went in there that I was put on probation for one year as a 24-hour lease, and at the end of one year's lease period I called up Mr. Gilworth that I would like for a longer period lease, and was told that that was the only kind of lease they had, was 24 hours. It was never very satisfactory. You wouldn't lease an apartment for 24 hours, would you?

The Court: Well, I don't know. I am fortunate to have a home that I built long before I went on the bench, and I have lived in it for 27 years. So I do not worry about apartments. I never lived in one.

The Witness: That is a sword hanging over your head when you have that to put up with.

The Court: Well, all right.

Mr. Hall: If your Honor please, there is one statement or question on the record by counsel that I think should be stricken because it is not the truth as placed there by the testimony, and that is the fact that Richfield owns the station.

The Court: That what?

Mr. Hall: That Richfield owns the station.

Mr. DeMartini: We stipulate we leased it.

The Court: It is a conclusion. In the ordinary sense, gentlemen, you want all to bear in mind that which we apply to these various relationships are legal epithets which mean [fol. 1561] very little to the people who deal with companies in regard to the stations and, to all intents and purposes, regardless of whether Richfield has a lease from someone else, which I refer to as the prime lease, the average person who deals with them considers that they own the station and allow them to operate on certain conditions. So I do not think the epithet which a layman applies to it has any significance as far as I am concerned, and ultimately I have got to determine the fact.

I am trying to find that statement that I think Mr. Para-

dise or Mr. DeMartini—I have forgotten who made the opening statement—quoted from Mr. Justice Douglas' opinion in the Masonite case, where he said something about the phrases of lawyers do not mean anything ultimately, that you are concerned with the kind of relationship that is established. So I think we will let it stand.

Mr. Hall: The only objection I had, your Honor, was to pass unchallenged the statement on the record. I know——

The Court: You do not have to challenge it.

Mr. Hall: The epithet was not an epithet of a layman but an epithet of a professional man, if you want to call it an epithet.

The Court: We are not bound by lawyer's epithets, anyway.

Mr. Paradise: I will be glad during the noon hour to ascertain whether——

[fol. 1562] The Court: I instruct juries as to Lawyers' arguments on facts, so I am going to follow that line.

Mr. Paradise: I will be glad to undertake during the noon recess to ascertain whether Richfield owns the fee on the property or hold it under a lease and advise counsel.

Mr. Hall: Mr. Paradise, I am not even interested. I just do not like the statement on the record.

The Court: All right, go ahead.

By Mr. Paradise:

Q. Now, Mr. Pierce, you were telling me who were present at the time of this sale by you of the merchandise and equipment.

A. That is correct.

Q. And you mentioned Mr. Lynch and his son. By the way, it was either Mr. Lynch or Mr. Lynch's son, Mr. Lynch, Jr., who succeeded you as the operator of this same station?

A. That is correct.

Q. Who else were present?

A. Mr. Harold Gross.

Q. You understand Mr. Gross to be a Richfield merchandiser?

A. Yes, sir.

Q. Who else?

A. Mr. Ed Klontz, an employee of mine.

Q. I can't hear that name.

A. Mr. Ed Klontz, K-l-o-n-t-z, he was an employee of [fol. 1563] mine.

Q. He was your employee?

A. Yes, sir.

Q. And who else?

A. I believe there were a couple of other merchandisers but I do not recall their names, Richfield merchandisers. Oh, yes, one other man from Richfield. I just can't think of his name now, but he was an office man, or, I presume, a high-up official of the company.

Q. You do not know who he was?

A. I would recognize his name if I heard it.

Q. But you do not know his name now?

A. I just can't think of it. I know it.

Q. Had you ever seen him before?

A. Oh, yes.

Q. Where had you seen him, at your station?

A. Many times before, at my station and at the downtown office.

Q. Was he a merchandiser?

A. No. I don't know his true capacity. In my terms he was a "big shot" in Richfield Oil Company.

Q. The men that you identified as two other Richfield merchandisers, had you ever met them before?

A. No.

Q. Can you describe them to me?

[fol. 1564] A. No.

Q. All right. What occurred on that day? And by the way, what day was this? Can you give us the date of this?

A. Well, it was—I believe it was around the 1st or 2nd of January.

Q. That was in 1950?

A. Yes.

Q. Was that the date you moved out?

A. Yes.

Q. This conversation that you mentioned in response to Mr. Hall's questions occurred at the station?

A. Yes.

Q. Please tell me what occurred at that time. What were the conversations?

A. On the date of the sale?

Q. Yes.

A. We all lined up in the office and the—well, we will start the sale now, Harold Gross, I believe said——

Q. I can't hear you.

A. I believe Harold Gross was sort of the ringleader. He started in and said, "Well, we will now start the sale." And he started suggesting various accessories on my shelves to Bert Lynch and his father. Now, we started in with one item and he would buy it or he would not buy it, as he saw fit. If he didn't buy it I would have my man take all those items off the shelf and put them in a box and carry them over to the other station. Well, he carried [fol. 1565] almost everything there was over to the other station.

Q. And that went on item by item?

A. Yes. That is as far as the merchandise was concerned. Then when it came to the equipment part——

Q. Now, before you leave the merchandise, did Mr. Gross ever say as to any of those items that he would not permit Mr. Lynch to buy them?

A. No.

Q. He did not say that?

A. No. They had talked that over before.

Mr. Paradise: I move that that be stricken. I am talking about conversations that occurred in your presence, Mr. Pierce.

The Court: Just tell him what took place in front of you.

A. He did not say anything about not permitting him to buy it, no, sir.

By Mr. Paradise:

Q. He did not say that?

A. No, sir.

Q. Did any of the other Richfield people you mentioned but whose names you do not recall, other than Mr. Gross, take part in this conversation?

A. Very little.

Q. It was pretty much between you and Mr. Lynch and Mr. Gross, is that correct?

[fol. 1566] A. Yes.

Q. Did Mr. Gross make any comments concerning price or the condition of the materials?

A. Not that I remember of.

Q. There was no discussion——

A. If there was any question, usually it was asked of me: How much did this item cost you? How much do you want to sell it for? And I would give a price. If he thought it was too much, he would either ask me to reduce the price or he would, I believe, on a couple of occasions—on a couple of occasions, I believe Mr. Gross said, "Well, how would it be if we call up the wholesale house that sold you this merchandise and ask them how much the price was?" Which was agreeable.

Q. When he thought it was too much he would ask you to reduce the price. Who was the "he" you were referring to, Mr. Lynch?

A. Yes, sir.

Q. The type of articles we are talking about here are what are known as accessory items?

A. Yes.

Q. All are known as accessory items?

A. Yes.

Q. We are not talking about anything else?

[fol. 1567] A. There were a few pieces of equipment bought in this same room.

Q. The items which you failed to sell to Mr. Lynch were all items which were not on Richfield's approved list of accessory items which could be sold on Richfield's credit cards, is that not correct?

A. No, not necessarily.

Q. The choice, as I understood from what you formerly said, the choice of whether he purchased was made or was not made with Mr. Lynch?

A. Right.

[fol. 1568] Q. Now, what did you mean when you testified that this whole thing was pretty much of an auction?

A. I meant that Lynch would make an offer, we will say,

—we will say, for example, that Mr. Gross would say, "How much do you want for this item?"

Mr. Lynch would make an offer, and I had an opportunity to either sell it or keep it. If I would say, "$10," Mr. Lynch might say, "I will give you eight," or "I will give you five." If I wanted to sell it for five, I could do so. If I felt that was too much of a loss, I either refused to sell it, or I would sell it for $5.

The Court: Those were only items which were not on the approved list?

The Witness: No, you Honor.

The Court: Or would that also go to items which were on the approved list?

The Witness: It was on some items that were on the approved list.

The Court: Did you take a loss on those, too?

The Witness: Yes, I did.

The Court: In other words, they did not give you the replacement value?

The Witness: No, not in all cases.

By Mr. Paradise:

Q. Those items on which you got less than the full new price at which you had bought them, those had been on [fol. 1569] your shelf for some time, had they not?

A. Some of them had.

Q. The condition was not as good as at the time you bought them?

A. The condition of the item itself was, but in some cases they were—oh, the labels were a little dusty or faded.

The Court: But were they items that had deteriorated?

The Witness: No. Spark plugs will not deteriorate with age, and spark plugs was one of the items.

The Court: What did you have there other than rubber goods, like fan felts, and things like that? They might deteriorate, might they not, by being exposed to the summer heat?

The Witness: No. The summer heat in Seattle is not as extreme as it is here.

The Court: Not as in Los Angeles, no. Still, you have

the month of July there, which is a nice month. I was there in April. I held court there in March.

The Witness: Oh, did you?

The Court: I liked the weather, even though we didn't get too much sun, but it was all right. We are not trying to criticize the climate, but just trying to find out why they insisted on giving you less than the list price on these items, if you know.

[fol. 1570] The Witness: I talked to Mr. Lynch, if I may be allowed to talk free,—I talked to Mr. Lynch several months after he took the station,——

The Court: No, you can't tell us that.

The Witness. Oh.

The Court: At any rate, as far as you remember, they made you reduce the prices, or, I mean they made an offer to you at less than the list price on items which you did not think had deteriorated?

The Witness: Yes, that's true.

By Mr. Paradise:

Q. And when you say they, you are talking about Mr. Lynch and his son, are you not?

A. That's right.

Q. And you are not talking about Mr. Gross, the Richfield man?

A. No.

Q. Now, what happened in connection with the sale of your equipment? By the way, what equipment did you own in that station?

A. I owned everything in the station except the building, the hoist, the air compressor, and the gas pumps.

Q. You did not own the tanks?

A. No, not the gas tanks either.

Q. You didn't own the pumps?

A. I mentioned pumps, I believe.

[fol. 1571] Q. You didn't own any of the fixed items of equipment?

A. No. I did own some of the fixed items, too. I beg your pardon.

Q. What were the items you owned?

A. I owned a cabinet, approximately 5 feet wide by 2 feet deep, with two doors on it.

Q. Was that a wooden cabinet?

A. A wooden cabinet. And a work bench.

Q. And what was the value of that?

A. About 10 or 12 dollars.

Q. I see. What else did you own?

A. I owned a work bench and a tire rack.

Q. What were the values of those?

A. The value of those,—well, I originally bought them for forty some dollars, and there was—there should not have been any depreciation on them, so far as wear and tear is concerned.

I was told by this other gentleman working for Richfield, who I cannot recall his name right now, that I did not buy them in the first place, although I have an inventory to show I did.

In the second place, he said they are fixtures attached to the buildings, and, therefore, you can't move them or take them with you.

[fol. 1572] Q. You are talking about this wooden bench?

A. Yes, and the cabinet.

Q. What equipment and tools did you own in the station?

A. Oh, I owned three big lubester guns, three drains, a battery recharger, fast charger, a hydraulic jack, and several, oh, a great quantity of small tools and electric drills, and extension cords, the usual things that all service stations carry in tube testing.

Q. What in the aggregate had you paid for that equipment?

A. Well, the equipment alone I would estimate over $3,000.

Q. You bought those items over a period of time, during the four to five years in which you had been occupying this station?

A. That's correct. Most of them new.

Q. Those were all movable items of equipment, small items?

A. Well, not all of them. The grease guns were as tall as the thing you are standing in there, and almost as wide, almost as square.

Q. Tell me, did you sell that equipment to Mr. Lynch?

A. No, sir.

Q. None of it?

[fol. 1573] A. He wouldn't buy any of it.

Q. Did you ask him to buy it?

A. Yes, sir.

Q. Did he want to buy it?

A. No. His son took over after we went in the lube room, after leaving the sales rooms, and his son walked in there and said, "We don't want anything in this room. Take it all out." That included tires, new tires, fan belts, all my equipment, any spark plugs, and everything in there. He was very arrogant and, shall we say, hardboiled, and he said, "We don't want anything in this room. Take it all out," at which time Mr. Gross intervened and said, "Well, I think you should buy his tires and fan belts, at least, from him," which he later did do. I had some new tires, and some new inner tubes, some new fan belts. I don't recall if there were any other items of merchandise in that room.

Q. This particular equipment that Mr. Lynch didn't want to buy, had you discussed the purchase with Richfield, the matter of your original purchase of that before you bought the station?

A. May I have that again?

Q. This particular equipment that you had on hand at the time you moved on the station, which Mr. Lynch didn't want to buy, is that the stuff you are talking about?

[fol. 1574] A. Yes.

Q. This wooden bench and this wooden cabinet?

A. Yes.

Q. And these grease guns,—at the time you bought them, did Richfield have knowledge of that?

A. Yes, it did.

Q. Did you talk to anyone in Richfield before buying those, and describe them to Richfield?

A. No. At the time I bought the station from the previous owner, prior to my buying them this gentleman said, or he got kind of tired in watching them itemize these items, and he says, "Mr. Pierce, I have personally checked every item on this inventory, and to save time I would suggest that you buy everything as listed on the inventory, as is."

Q. So we may identify whom you mean when you say "he"—who was the former tenant?

A. Pardon me?

Q. Who was the former operator of the station from whom you bought?

A. I don't recall his name. There were two men.

Q. How?

A. There were two men we bought from.

Q. The one who made the statement,—Mr. Pierce, I would suggest you bear these things in mind—was that the Richfield merchandiser?

[fol. 1575] A. No, they didn't have any merchandisers at that time.

Q. Mr. Mumford?

A. Not Mr. Mumford. There was another company——

Q. There was another employee of Richfield?

A. Yes, sir.

Q. The things you took from the station at the time you departed, this $3,000 worth of equipment included a lot of things you did not buy before you moved into the station——

A. Yes.

Q. Back in 1945?

A. That's right.

Q. Do you recall what proportion there were of new things?

A. New equipment?

Q. Yes.

A. I don't believe there was anything new.

Q. Well, things that——

Mr. Hall: Is this inquiry as to the things he purchased when he purchased the station?

Mr. Paradise: The things he bought after he entered into the lease.

Mr. Hall: Because I want to say that the exhibit to the lease would list those things.

[fol. 1576] The Court: He is just enumerating the things he bought to show their attitude when he bought the station, and their attitude when he left.

The Witness: Possibly I could help the gentleman out there in this respect: Every piece of equipment I had in the station when I moved had been bought by me new since I

originally moved into the station. Is that what you wanted to know?

By Mr. Paradise:

Q. That is what I wanted to know. And it had not been bought by you at the time you moved in?

A. That's correct.

Q. In other words, it was all equipment you bought sometime after you moved into the station?

A. Yes, sir.

Q. And so it wasn't equipment you bought from the former operator of the station?

A. No, sir.

Mr. Paradise: I see. My cross examination may take a little longer, your Honor. Does the court want to take a recess?

The Court: No, we will finish with this witness. We are going to keep longer hours today. Let's finish with this witness, because I told you yesterday that at the close of today we will adjourn until Tuesday, and we want to get [fol. 1577] through with as many witnesses as we can.

By Mr. Paradise:

Q. Now, Mr. Pierce, at the time of this sale was anything else sold?

A. Anything else sold?

Q. Yes, by you to Mr. Lynch and his son.

A. I believe we mentioned all of that. He bought from me the gasoline.

Q. He bought your entire inventory of gasoline?

A. Yes.

Q. Did he buy your entire inventory of oil and grease?

A. Yes, I believe so.

Q. Did you make any effort at the time of this sale to add as an element in the price an amount for good will?

A. No, I didn't.

Q. You were told that you could not?

A. I was told I could not, yet, sir, but I thought—well, here we go again. I am not allowed to say those things again.

Mr. Paradise: Yes, I would like to hear the conversation you had with the Richfield representative.

The Court: You just say it until the lawyers stop you. Don't get educated too fast.

The Witness: I thought it was very unfair.

By Mr. Paradise:

Q. Mr. Pierce, I want your conversations with the Rich- [fol. 1578] field representatives.

Mr. Hall: Do you want to know what he thought?

Mr. Paradise: No, I want to hear what he said.

The Court: If you expressed your thoughts, that is all right. If not, keep them to yourself.

The Witness: Very well.

By Mr. Paradise:

Q. Now, with whom did you talk, Mr. Pierce?

A. At the time of the sale?

Q. No. Well, I will limit it first to the time of the sale. With what Richfield person, Richfield employee, did you talk concerning whether or not you had an element of good will that you could sell?

A. Mr. Gross, Harold Gross.

Q. Now, did you have more than one conversation with Mr. Gross about this item of good will, or just the one time?

A. Yes, I had more than one.

Q. What was the first one, and when did that occur?

A. Oh, many times I had talked to him about why I thought it was right that I should get some good will if I sold my station.

Q. Oh, you are talking now about a period prior to the time you moved out?

A. Yes.

Q. Now, you moved out about the 1st of January, 1950? [fol. 1579] A. That's about right.

Q. How long prior to that time had you discussed this with Mr. Gross?

A. Oh, more than a year before.

Q. More than a year. At that time were you planning on moving out?

A. No.

Q. What occasioned your discussion concerning that?

A. Other Richfield dealers moving out.

Q. How?

A. Other Richfield dealers moving out.

Q. Now, what was your discussion with Mr. Gross on that subject, then?

A. Well, if I recall correctly, when first——

Q. First, Mr. Pierce, can you fix the time and place when it occurred?

A. The time I first started to make the sale from me to Mr. Lynch.

Q. Now, I am talking about the time, a year earlier than that, with yourself and Mr. Gross.

A. Well, on another occasion there was another Richfield dealer who was evicted, we will say, and I talked to Mr. Gross about it, and I said that I thought that he should get something for good will, because he had worked, built the business up from the time he bought it until he sold it.

[fol. 1580] Q. What did Mr. Gross say? First, where did this conversation take place?

A. In the Richfield station at 8555 Greenwood.

Q. That is your station?

A. Yes, sir.

Q. Oh, that is your station?

A. That was my station.

Q. Or was your station?

A. Yes.

Q. What did Mr. Gross say?

A. If I remember, he said it was against the policy of Richfield to allow anyone to collect anything for good will. Why, I never did understand.

Q. Did he say anything further?

A. Not that I remember.

Q. Now, what conversation did you have on this same subject-matter with Mr. Gross on January 1 of 1950, the date of your sale to Mr. Lynch and his son?

A. Mr. Gross started off the conversation with something to the effect that, "Mr. Pierce, do you intend to change the phone number on this station?"

Q. I am sorry. I didn't hear you.

A. Mr. Gross asked me if I intended to change the telephone number, change it from the Richfield station to the Texaco station I was going to across the street. To which I [fol. 1581] replied, "I did." And I replied also and said the reason for that was that I had been there all these years and built up good will, built up that telephone number, and I felt if I couldn't get anything in pay for good will, that I was at least entitled to take the phone number with me, and keep my old customers, which I did do.

Q. That is what you said?

A. Yes, sir.

The Court: And the telephone number was in your name?

The Witness: Yes, it was. I paid the telephone bill every month.

By Mr. Paradise:

Q. Now, did Mr. Gross make any statements at that time?

A. No, I don't recall of any others regarding the good will. [fol. 1582] The Court: By the way, did you carry your name on the station or just "Richfield"? I know that some of your stations there have a name. Most of the Union's stations are "McHale," aren't they?

The Witness: They are McHales, and some of the others have the owner's names. In my case it would be "Pierce."

The Court: Did you have your name on it?

The Witness: No, sir, I didn't. I had asked to have it on a couple of times and was told that that was an unauthorized sign.

By Mr. Paradise:

Q. Were there any further discussions on the occasion of your sale to Mr. Lynch and his son of whether or not you could add to the sales price an item of goodwill?

A. Not that I recall.

Q. When, Mr. Pierce, did you arrange to go over to this Texas station? When did you make your arrangements with the Texas Co.?

A. Three or — days before Christmas 1950, or '49, possibly. Right at the time that I made the move right after I sold it, or just shortly before I sold the Richfield station.

Q. About a week before, you say?

A. Pardon me?

Q. You say it was about a week before you sold?

A. I believe it was less than that, about three or four [fol. 1583] days.

The Court: "Shortly," he said.

The Witness: Before I sold to Lynch.

By Mr. Paradise:

Q. I understood you to say it was before Christmas, which was on December 25th, and I know that you also said you made the sale to Mr. Lynch and the son on January 1st.

A. Yes. Well, I entered into an agreement with the owners of the Texaco station about a week before Christmas.

Q. You dealt directly with the Texas Co., did you not?

A. I dealt directly with the owners of the Texaco station. The only thing I had to do with the Texas Co. was to sign a lease and convince them that I was capable of handling the service station.

Q. Do you know whether the Texas Co. owns that land and building and pumps?

A. I don't believe they do.

Q. Do you know whether the Texas Co. has a lease on the station?

A. I am quite sure they have, the same as the Richfield station. They lease it from the owner in both cases.

Q. When you were talking with the owner of the place——

The Court: Did they have a 24-hour clause with that?

The Witness: No, sir. I have a year's lease with an option to renew.

[fol. 1584] By Mr. Paradise:

Q. When you were talking about the owner of the Texas station is it correct you were talking about a person who operated that station for the Texas Co. in about the same manner as the man operated the Richfield station before you took it over?

A. Very much different.

Mr. Hall: If your Honor please, I figure that is highly objectionable. We are making comparisons here that none of us can put a yardstick on.

The Court: No, no. He is talking about the owner. You see, these men consider that they have a stake in the place regardless of the term of the lease, and he no doubt considered himself owner while he operated. Didn't you?

The Witness: Yes, sir.

The Court: You are talking about yourself and the others in the same capacity, regardless of how the Government considers you or Richfield or Texas considers you——

The Witness: Well, if you would like me to use my own words——

The Court: Here is the quotation that Mr. Paradise gave the other day, which is very, very applicable to the situation. It is a quotation of Mr. Justice Douglas from the Masonite case. It says: "So far as the Sherman Act is concerned, the result would turn not on the skill with which counsel has manipulated the concepts of 'sale' and 'agency' [fol. 1585] but on the significance of the business practices in terms of restraint of trade."

So in determining what this relationship is it is not what you gentlemen call it, it is not what these laymen call it, but what should develop, the type of relationship and the type of control that should develop after all the evidence is in.

So I do not think we ought to stop and quibble about the words a man uses. I have no doubt that each of these men considers himself a businessman, that he has a business development to which he contributes, but that does not decide the relationship from a legal standpoint. I will do that when all the evidence is in and on the basis of all the evidence, not on the basis of what a particular operator—let us call them "operators", that is a good word for them—an operator calls it at one stage or another.

All right, let us go on.

By Mr. Paradise:

Q. When did you first make your arrangement with the Texas Co., then? I mean when did you first talk to the Texas Co. about moving into that station?

A. Oh, I would say probably three or four days before Christmas.

Q. Was that the day on which you signed your lease on the station?

A. No.

[fol. 1586] Q. With the Texas Co., or was that the day when you first talked to them?

A. That is the day when I first talked to them.

Q. At the time you moved out of this Richfield station did you take with you over to the Texas station all of the equipment and all of the automotive accessories that you had in the Richfield station and which Mr. Lynch and his son failed to buy?

A. No.

Q. You did not?

A. No.

Q. What did you do with the excess?

A. The sale had not been consummated at that time. Aren't we still talking about three or four days before Christmas?

The Court: He is talking about after you completed the sale. What did you do with the excessive equipment which he would not buy?

The Witness: I took part of it home and part of it over to the Texas station.

The Court: All right.

By Mr. Paradise:

Q. And that which you took home you have since moved into the Texas station?

A. Some of it. I still have some of it at home.

The Court: Is it a smaller station, or did you have so [fol. 1587] much excess equipment?

The Witness: Because Mr. Lynch and his son refused to buy the equipment from me and I had no other way to sell it. I have been trying to sell it since.

The Court: Didn't you need it on the other station?

The Witness: No, I didn't. The other station was completely equipped.

The Court: Completely equipped.

The Witness: I bought everything that was in it.

The Court: All right.

By Mr. Paradise:

Q. Did you buy additional equipment from the outgoing operator of the Texas station?

A. Yes.

Q. And that is the reason why you had a surplus?

A. Yes.

Mr. Paradise: No further questions.

The Court: All right. Any redirect?

Mr. Hall: Just very short, your Honor.

The Court: All right.

Mr. Hall: I will try to confine it to just a couple of questions.

Redirect examination.

By Mr. Hall:

Q. I want to clear up one matter on the record, Mr. Pierce, on the matter of this lease that Mr. Paradise questioned [fol. 1588] you about, stating that there was a reduction of rent. According to the lease, when you went in there you paid $50 plus one cent over 5,000, is that right?

A. I believe so.

Q. And then, as you testified, it went up to $100 flat rate, and then Mr. Paradise said——

Mr. Paradise: I object to that, if the court please, because that assumes.

The Court: I do not like this method of examination. You seem to want to sum up everything you said before, and I am not interested. That is not proper cross examination.

Mr. Hall: Your Honor, I was only trying to clear up the one thing.

The Court: You are not clearing up. You are merely repeating into the record what you think is a summary of his testimony, and I do not need a summary of testimony, if you please.

Mr. Hall: I am very sorry if your Honor got that impression.

The Court: Then, all right. I will stop the examination, then, and prohibit examination only as to something that is actually rebuttal.

Mr. Hall: That is what I intend to.

The Court: Then strike out what you have already said, because it is an attempt to summarize testimony of wit- [fol. 1589] nesses and I do not approve a lawyer doing that, even before a jury. It is absolutely improper.

Mr. Hall: May I ask your Honor for my own instruction——

The Court: I am not answering any questions. You know how to conduct the examination. You have been in this court often enough. You have been doing that with every witness you have examined since yesterday. It is time you stopped it. You repeat every answer just by way of emphasis, and I do not approve of that. That is all there is to it.

Mr. Hall: I have no further questions, your Honor.

The Court: All right.

Mr. Hall: I am very sorry if your Honor got that impression. I apologize. I had no intention.

The Court: All right, step down. 2:00 o'clock.

(Whereupon a recess was taken until 2:00 p. m. of the same day, Friday, May 11, 1951.)

[fol. 1590] Los Angeles, California, Friday, May 11, 1951. 2:00 o'clock.

Mr. Alexander: The government will call Lt. Pittman.

Thomas L. Pittman, called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

The Clerk: Your full name, please?

The Witness: Thomas L. Pittman.

The Clerk: Thomas L.—how do you spell your last name?

The Witness: P-i-t-t-m-a-n.

The Clerk: Thank you.

By Mr. Alexander:

Q. Will you state your residence, Lieutenant?

A. El Paso, Texas.

Q. Have you ever been in the past employed by the Richfield Oil Corporation?

A. I have.

Q. When and where was that employment, Lieutenant?

A. It was in Phoenix, Arizona, from April, 1948, until February of 1950.

Q. In what capacity were you employed?

[fol. 1591] A. Branch merchandiser.

Q. Who was your superior in that capacity?

A. Mr. W. L. Gallaher.

Q. Lieutenant, calling your attention to the period you began your employment, did you have any conversations with Mr. Gallaher in connection with the manner in which you should perform your duties.

A. Yes.

Q. Will you explain to the court what was the nature of your duties as was explained to you by Mr. Gallaher?

A. Well, I was to solicit, install, train, and ultimately supervise dealers in service station operation.

Q. I hand you, Lieutenant, Government's Exhibits 1-E, 1-F, and 1-G in evidence, and ask you to examine them, please.

Are you familiar with these forms, sir?

A. I am.

Q. Have you ever executed any of these forms on behalf of the Richfield Oil Corporation?

A. Many times.

Q. Approximately how many of this type of form have you executed?

A. I would say from 20 to possibly 25.

Q. Will you describe to the court, in substance, the conversation that would take place between you and a signer, a lessee, of one of these agreements during the period you [fol. 1592] served as the branch manager at Phoenix, Arizona?

A. You mean in regard to this particular form?

Q. Any one of those three forms, Lieutenant.

A. Well, the first thing I would bring out to him would be the terms of this particular agreement, and the fact that it was a 24-hour lease and could be canceled by any party, that is, either party. I would explain to him at that same time how he could cancel it in the event that he ever desired to do so.

The next thing I would take up would be the rental agreement here, and possibly the next item would be the maintenance of our property that he would be a tenant of.

Q. Anything further?

A. I think that's about all I would discuss with him on this particular form.

[fol. 1593] Q. Lieutenant, does that Form provide for any purchase or sale of petroleum products by the Richfield Oil Corporation?

A. As far as I know it does not. It has been a long time since I have read one.

Q. In your installation, as you stated, was one of your duties installing operators?

A. That is right.

Q. Were you at that time considering operators to be the parties who had executed one of these tenancy leases?

A. Yes.

Q. Will you describe what was the nature of the conversation you would have in connection with the type of products that should be purchased and sold by this tenant?

A. Those, naturally, would be Richfield products, their petroleum products.

Q. Excuse me. Just state what was generally the conversation that would take place.

A. Well, I would explain to the incoming operator that he was expected to purchase his products from us, Richfield Oil Corporation, and no one else as far as petroleum products were concerned. And furthermore, that he should purchase his TBA from a person authorized to handle that particular line. That in the event we could not supply him with any particular TBA items that he should need, that he should go elsewhere, that he should go elsewhere and pur-

[fol. 1594] chase them rather than to miss a sale. Other than that he was to purchase them from us.

Q. By "us" you mean the Richfield Oil Corporation?

A. That is right.

Q. Lieutenant, will you describe the terms of the supervisorial duties which you related you also performed for the Richfield Oil Corporation? Is my question clear?

A. I do not believe it is.

Q. Well, you have been stating that you have installed tenants in stations.

A. That is right.

Q. And that you have arranged for the products that shall be bought, etc. What do you do other than this type of activity, or do you do anything else?

A. I see that the dealer is in uniform at all times, that his station is kept properly policed, that is, that it is kept clean and operated in an orderly manner, that the dealer himself is acquainted with our products and he is acquainted with the servicing of his customers' cars. In other words, that he knows what he is doing in the station as far as service is concerned. That he is operating reasonable hours to service his neighborhood or his trade, that he maintains a degree of loyalty towards our company. I think that would pretty well summarize it.

Q. Lieutenant, do you make periodic inspections of these stations to determine these factors you just stated?

[fol. 1595] A. I did, yes.

Q. Have you observed in the tenant stations any petroleum products other than those of Richfield?

A. At various times I have, yes.

Q. What action have you taken in those instances?

A. Well, it depended on the situation.

Q. Well, let us take a situation.

A. Well, I will take the situation in one of my particular stations. The dealer's name was Sidney Potkins.

Mr. DeMartini: I am sorry. I did not hear it.

A. Sidney Potkins. I found some Triton motor oil in his station, a number of cases of it and, as I recall, I asked him what reason he had to have it in his station. And he explained to me that he had one particular customer that would not use anything else and that he had approximately 30 cars and trucks, servicing them, and we were selling them gasoline, which I happened to know was true as far as the gasoline was concerned. So I immediately took the dealer and we went over to see this particular customer and attempted to sell them our brand of oil, which they refused to buy. They said that they had been using this Royal Triton for a number of years and they believed it to be superior to our motor oil. Therefore, as I say, I was unsuccessful in selling them. So I told him to continue to use the motor oil, in so much as we were selling them gaso-

line, but to hide it, keep it out of the way, that it looks bad setting out, and I didn't want to have to see it or I didn't [fol. 1596] want anyone else to see it. So he did. He was very cooperative about it. Sometime later I was ultimately able to sell this particular company on our oil and, as a result, why, he got the oil out of the station.

Q. Were there frequent occurrences of this nature, Lieutenant, with your products?

A. No.

Q. There were not?

A. That was very unusual.

[fol. 1597] Cross-examination.

By Mr. DeMartini:

Q. Lieutenant, you said that you executed these Form 542 leases. You don't mean you signed them on behalf of the company?

A. I mean that I took them home and typed them out, and had the dealers sign them.

Q. In other words, you prepared them?

A. That's right, I prepared them.

Q. And someone else at Richfield executed them?

A. That's right.

Q. One of your superiors. In connection with your function as a merchandiser, you dealt only with the L-O stations; is that correct?

A. That's correct.

Q. You know what a 337 and a 3-C service station dealer is?

A. I do.

Q. —as we use that term?

A. Yes.

Q. And you had no connections at all with that type of dealer?

A. None.

Q. And the Mr. Popkin to whom you refer was an operator under an L-O lease; is that correct?

[fol. 1598] A. He was an L-O station operator.

Q. And he was at the time these transactions you refer to took place?

A. That's correct.

Q. Referring back—let me ask you this first: What area did your duties encompass?

A. The city of Phoenix, and I had one station in Tolleson, Arizona, about 10 miles out of Phoenix.

Q. About how many L-O stations were in that area?

A. I had 23 at one time, and they ultimately reduced it to 13; that is, another merchandiser was hired to relieve me of a number of the stations.

Q. As a part of your duties, did you interview prospective applicants for these stations?

A. I did.

Q. As a part of your duties, and in accordance with the instructions which you stated you received, what was the nature of the interview. What did you ask them, or carrying it further, did you ask them anything about their reputation?

A. Well, the first thing I always inquired about was their financial status, and I always made out a particular form. I don't recall the name of it. I took credit references from them, and personal references, and inquired as to where they had formerly been employed, and how much experience they had had in our particular line of business. [fol. 1599] Q. Did you make inquiry as to their family, and their reputation, and their character?

A. Yes, sir.

Q. Did you personally observe them as to cleanliness?

A. Yes, sir.

Q. Why did you do all those things?

A. I checked into their family affairs mainly to satisfy myself that they might be stable, in the event I put them in a station. I observed their cleanliness. I felt if a man was clean about himself, in all probability he might be clean with the station.

Q. Now, it was one of your duties, was it not, to also install these operators?

A. Yes, sir.

Q. At or before the time of the installation, did you discuss with them or give any directions to them with respect to their operation of the station, generally?

A. I did.

Q. Did that include this matter of maintenance of the station?

A. It did.

Q. What did you tell them with respect to maintenance?

A. If they broke a window, they were to replace it. If they burned out a light bulb, it was to be replaced by them. The stationary equipment, as far as the air compressor, the [fol. 1600] hoist, and the pumps would be maintained by us, and that their station was to be kept clean; that the equipment we owned in the station was to be kept clean and properly serviced. As an example, our air compressor was to be serviced at periodic times, and that at various times I would inspect that air compressor and make sure that it was serviced. That our restrooms were to be kept up in proper condition.

Q. Did you give them any advice or instructions with respect to the time, the number of hours per day and the number of days per week that the station was to — kept open?

A. Yes, sir.

Q. Did those instructions vary from time to time, dependent upon the nature of the location of the station?

A. It depended on the location and the time of the year.

Q. Did you give them any instructions with respect to the prescribed Richfield service station uniform?

A. I did.

Q. Did you discuss the matter of the display of signs, other than Richfield signs, at the station?

A. I explained that there were to be no signs posted on the premises without our approval, as I recall.

Q. Did you also explain to them that from time to time they would be called upon by you or another merchandiser [fol. 1601] for the purpose of inspecting the station?

A. Yes.

Q. Did you explain to them the 24-hour clause in the leases which you have been shown?

A. Yes, sir.

Q. What did you tell them with respect to those privileges of termination which were afforded to both parties?

A. That we could terminate in 24 hours if their operation wasn't satisfactory; that they, in turn, could terminate in 24 hours if they were dissatisfied with their operation, providing we had a dealer available for them.

Q. You state you installed dealers. By installation, you

mean that you were present at the time they opened their stations; is that correct?

A. That's right.

Q. Would you be or attempt to be of any assistance to him at that time?

A. Yes.

Q. What would you do?

A. I aided them. I acted more or less as a middleman in there. I aided them in pricing the items, and I aided them in verifying the items that were on the 542-A, B, C, D.

Q. Did you ever wear a Richfield uniform yourself?

A. I always did on station changes.

[fol. 1602] Q. Did you make any effort to assist them at the inception of their lease in the operation of the station for any period of time?

A. Many times.

Q. How long would you stay there, normally?

A. It varied on the type or character of dealer that I had.

Q. What was the period of variance, Lieutenant?

A. From one day to ten days. I have stayed as long as ten days with a dealer.

Q. What would you do during that time?

A. Work with them out on the island, sell merchandise as though I were an employee of the station, explain to them as I went along.

Q. Did you ever participate in what we call neighborhood solicitation? You know what neighborhood solicitation is?

A. I have probably made over 1,000 door-to-door calls with dealers.

Q. That is in the area immediately surrounding the station; is that correct?

A. That's right.

Q. And the purpose of it is to secure customers for the station; is that correct?

A. That's right.

[fol. 1603] Q. In connection with the instructions that you received, were you advised or instructed to inform these operators or prospective operators of the reason for the 24-hour lease, as related to the investment that we had in the station?

A. Will you read that question, please?

(The question was read.)

Q. By "we" I mean Richfield.

Mr. DeMartini: I am sorry, your Honor. I wasn't conscious I used that term.

By Mr. DeMartini:

Q. That Richfield had?

A. I don't recall if I ever brought out the relationship of the investment.

[fol. 1604] Q. Do you know what the term "blue sky" means?

A. I sure do.

Q. What does "blue sky" mean?

A. That is selling your goodwill along with your business.

Q. At the time that you would procure a prospective lessee for a service station did you advise him in any manner as to whether he should or should not pay for what you call blue sky or goodwill?

A. We always advise him that.

Q. What do you advise him?

A. Told him that it was against the principles of our company and most other major oil companies.

Q. "Against the principles of our company" to do what? You have not finished it.

A. To sell his station with blue sky. In the event that he wanted to do that, he could not collect any blue sky.

Q. At the time of installation of a dealer—an operator, rather, were you instructed to advise him as to the policy of the company with respect to assisting him in selling to a successive lessee the gasoline, Richfield lubricating oils and approved merchandise that he then had on hand?

A. Well, he was informed of that during the process of preparing him to enter the station.

Q. Let me carry that a little further, Lieutenant. He was informed that—you are speaking now of a prospective [fol. 1605] lessee going into a station and buying out?

A. As I understand you, you are asking me if I informed the dealer that, in other words, let him know that he is taking no chance with his merchandise that he has pur-

chased, that in the event he wanted out, he could sell that to the incoming dealer.

Q. That is correct.

A. Yes, we always explained that to them.

Mr. DeMartini: That is all. Wait a minute.

The Court: Any redirect?

Mr. DeMartini: One further question, if your Honor please.

The Court: Very well.

By Mr. DeMartini:

Q. What equipment is the operator of the station normally requested or required to purchase for the operation of the station at the time of his installation? What does it consist of?

A. I insisted that they buy all movable equipment, with the exception of hand tools, and that was entirely up to the dealer and the outgoing dealer.

Q. What is movable equipment? What does that consist of?

A. The lubrication equipment, the grease guns, all the lubesters, battery charger, jacks, tire gauges, air hoses.

Q. He never was required or instructed to purchase the [fol. 1606] pumps or tanks or fixtures of any nature?

A. No, sir, not that I ever knew of.

Mr. DeMartini: That is all.

The Court: All right.

Mr. Alexander: Just a couple of questions, your Honor.

Redirect examination.

By Mr. Alexander:

Q. Lieutenant, these instructions that Mr. DeMartini has been alluding to that you gave the operator, the lessee-tenant at the time he took possession, were they in the form of writing to you?

A. No.

Q. Were these instructions given to each and every tenant who took occupation of the station?

A. They were in my branch. We had a list—you say,

were they in writing? We had a list of different items we were to cover with the dealer, but no way that we were to handle it with them.

Q. Were these in the form of instructions to you or just subject matter to be discussed?

A. They were subject matter to be discussed.

Q. Possibly you could have discussed all of them and possibly not have discussed all of them?

A. That is correct.

Q. These instructions that you gave to the tenant as the [fol. 1607] prospective purchase of petroleum products of Richfield were not contained in the written documents 542 that you negotiated and which were subsequently signed by him, were they?

A. Some of them are and some of them are not.

Q. Which ones are contained there?

A. Well, the maintenance of his premises is contained in here.

Q. Is there any provision in that written document before you of the type that you have executed pertaining to the purchase of gasoline or petroleum products and automotive accessories?

A. As I said before, I don't recall. It has been a long time. I would have to read that over and see.

Mr. DeMartini: May I ask one further question, your Honor?

The Court: All right.

Mr. DeMartini: Oh, I am sorry.

Mr. Alexander: No, I am through.

The Court: All right.

Mr. DeMartini: I don't know whether he is through or not.

The Court: Are you? All right, you ask the question.

Recross-examination.

By Mr. DeMartini:

Q. The merchandise was specified from time to time, was it not, Lieutenant?

[fol. 1608] A. Yes, sir.

Q. Did you use the form 205?

A. Yes, sir.

Q. How was that form used?

A. I used it a little different from the company policy. I used to go around to the dealer and I would make that form out and not give him a very good grade on it, to impress upon him that I did not wish to turn in a 205 of that nature, and ask him to make improvements and I would come back at a later date and make one out, which I usually did.

Mr. DeMartini: That is all.

The Court: All right.

Mr. Alexander: One last question, if your Honor please.

Q. These prospective tenants oftentimes, many times, invested monies in this deal that they entered into, did they not, prospective tenants?

A. Yes.

Q. They invested money in merchandise with Richfield?

A. Yes.

Mr. Alexander: That is all.

The Court: All right.

Mr. Hall: If your Honor please, the Government would like to call one witness out of regular order of proof, because he is from Spokane. He arrived here unexpectedly to us. If it is all right with you, I would like to call him.

[fol. 1609] The Court: All right.

Mr. Hall: Mr. Green.

Herman E. Green, called as a witness by the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: Your full name?

The Witness: Herman E. Green.

Direct examination.

By Mr. Hall:

Q. Your residence, Mr. Green?

A. South 308 Ray, Spokane.

The Court: I think Spokane is the one city that has no duplications, as far as I know. There are all sorts of duplicate names of cities. I never heard of a Spokane.

Mr. Hall: I do not believe I ever did, your Honor.

The Court: You travel through the east and you will find Oaklands and you will find Glendales and all sorts of California cities are duplicated all over, but I have never heard of but one Spokane, Spokane, Washington. All right.

By Mr. Hall:

Q. Mr. Green, the attorney for Richfield did not get your address. Will you speak just a little louder, please?

A. South 308 Ray, Spokane.

Mr. Paradise: Thank you.

By Mr. Hall:

Q. Your present occupation?

[fol. 1610] A. Dealer salesman.

Q. With whom?

A. Firestone Stores.

Mr. Paradise: We still can't hear you, Mr. Green.

The Witness: I am sorry, sir.

The Court: Speak loud enough so we can hear you.

A. Dealer salesman for Firestone Stores.

By Mr. Hall:

Q. During the year 1950 were you employed by the Quality Supply Co.?

A. Yes, sir.

Q. In what capacity?

A. Salesman.

Q. Where is the location of the Quality Supply Co.?

A. 919 East Sprague.

Q. In Spokane, Washington?

A. In Spokane, Washington.

Q. What were some of the main items of tires, batteries and accessories which they handle? Name the brand.

A. Firestone tires and tubes, Willard batteries, Champion, AutO-Lite, and A-C spark plugs, Fram Purolator and A-C filters, Whitaker battery cables. Then we had some novelty items.

Q. What about fan belts, what brands?

A. Gates fan belts.

Q. I think that is sufficient for our purpose here, Mr. [fol. 1611] Green. Did you in your sales efforts make any attempts to sell any of these brands which you had to any operators of Richfield service stations?

A. I did.

Mr. Paradise: Objected to as having no proper foundation, if the court please, unless the particular station and the type of station is first shown.

The Court: This is a preliminary question. Go ahead. He can particularize afterwards.

By Mr. Hall:

Q. Did you attempt to sell any of your articles to Mr. Ernest Heinekin?

A. I did.

Q. Will you tell us when that was and your experience?

Mr. Paradise: I object to the question as being compound and for lack of foundation.

The Court: Overruled. Go ahead.

Mr. Paradise: He is asking for what his experience was, your Honor, in addition to when, is that correct?

By Mr. Hall:

Q. When did you make this sale?

A. In August 1950.

Q. What did you sell?

A. I sold 10 Willard batteries.

Q. Were those batteries delivered, as far as you know, to Mr. Heinekin?

A. Yes.

[fol. 1612] Q. Did you at any subsequent time call back at that station?

A. I did.

Q. How soon after that?

A. One week later.

Q. Did you talk to Mr. Heinekin?

A. Yes, sir.

Q. Were your batteries in the station?

A. My batteries were in the station.

Mr. Paradise: May I object to the question, your Honor. That, I think, will go to a whole series of questions and witnesses, and in order to state the defendant's position, the objection is based upon the testimony of any of the so-called competitor witnesses, of which we are advised that there will be a great number by the Government's answers to interrogatories, for lack of foundation. And that is on the basis that we feel that the contract of the particular service station dealer must first be offered to this court, to disclose the nature of Richfield's relationship with that particular dealer, before the competitor——

The Court: Of course, that was based upon the idea of your contention that is any different than these contracts. The Government contends there is no essential difference and the Government is entitled, until I have ruled upon the question whether any of this series of contracts is different [fol. 1613] from the others, to present the evidence upon that theory.

Mr. Paradise: Of course, the Government has already offered two types of contract. One is the written contract covering L-O stations and the second is the written contract covering the—I won't call them independent—I will call them the 3-C stations and the 337 stations. And, as the court well knows, in both latter two types of contracts we have a written sales contract between Richfield and the service station dealer. We know that that written contract calls for the sale of a specified quantity of gasoline. We know that the Government is charging, in addition to the written contract, that there is a side oral agreement between Richfield and that particular service station dealer.

It may very well be that my objection at this time is inappropriate, because we know and the court knows and the record shows that Mr. Heinekin, concerning whom this witness is testifying, was an L-O operator.

The Court: That is right.

Mr. Paradise: And he so appeared here. But if a question should be asked about the name of a particular service station dealer with whom the court and counsel are not familiar, then we do not know whether we are dealing with an L-O operator as to which we have admitted full control over the type of products, or whether we are dealing with a

337 dealer or a 3-C dealer as to which we have a written contract to sell him a specified quantity.

[fol. 1614] The Court: I think that is a good warning. I think from now on we ought to begin to identify what we are talking about, especially in view of the statement yesterday by Mr. Dixon that they would follow the suggestion I made, that the pattern be established, and in view of your own statement of the nature of your claim and your own admission that this pattern as to which we have heard testimony applied to the whole group, that it would be more revealing if it were stated that the testimony relates to the particular type station, whether or not it was brought out through the witness or counsel's statement.

That is the way I do in these cases with multiple counts, whether they are a civil action or a criminal action. I just got through trying a mail fraud case last week, where the government had 49 counts to start with. I got them to pick out their best 15 counts, and then as they called their witnesses, they would say, "this relates to count 1," or "2," and it is very helpful to do that, especially when you have set the pattern after a week's testimony.

But it is evident that this gentleman is testifying as to a witness who has already been here. In other words, what they are trying to do is to follow up and have him state the experience he had with the product he tried to sell.

[fol. 1615] Mr. Paradise: Yes.

Mr. Hall: If your Honor please, Mr. Paradise was anticipating somewhat another question that I will ask about another station operator who is not in court.

The Court: All right.

Mr. Hall: And since the witness is not here, perhaps we had better decide what I shall be permitted to ask about that.

The Court: If you want to put him on a little out of order, because the man comes from a distance, there is no objection. You will have to tie it up later on, of course.

Mr. Hall: Yes, indeed.

The Court: I like to observe the rules of evidence and the rules as to proof, but ultimately they are all a means to an end. I don't want it to become a fetish as to a procedure.

Mr. Paradise: I was merely going to add this one thing, in view of Mr. Hall's statement concerning his asking this

witness concerning other dealers. Prior to the commencement of the trial the government subpoenaed various contracts relating to various service station dealers. We are prepared to produce those contracts, and it is our suggestion that a proper foundation be laid before a witness is permitted to testify concerning a particular type station, and that the type of contract and the particular contract be offered.

[fol. 1616] The Court: All right. Go ahead. Let's get back to the witness. I have forgotten all about it.

The Reporter: The question was answered, your Honor.

The Court: Read the question and the answer.

(The question and answer were read.)

The Court: Go on from there. Had you finished your answer?

The Witness: Yes, sir.

The Court: Then you go on, Mr. Hall.

By Mr. Hall:

Q. Did you have any conversation with Mr. Heinekin about those batteries?

A. Yes, sir.

Q. Did you make any statements to him about the batteries?

A. Yes, sir.

Q. Will you state what statement you made?

A. I commented about the brand name being turned toward the wall. That is not the proper way to display merchandise.

Q. We are having difficulty in hearing you, Mr. Green.

A. I commented about the brand name on the battery being turned to the wall. That is not a proper way to display merchandise.

Q. What was his explanation?

A. His explanation to that was that it was a compromise [fol. 1617] arrived at between he and the Richfield representative, to keep from sending those batteries back or returning them to the company I represented.

Q. Were you ever able to make any other sales to Mr. Heinekin?

A. Very few other sales.

Q. What sales you made, were they the same brand names of those that were approved by Richfield?

A. Yes.

Q. Did you handle oils?

A. No.

Q. No oils at all? Did you attempt to make any other sales to any other Richfield dealers?

A. Yes, I have, many times.

Q. Will you name whom you made those attempts upon?

A. Red Horwath, for one.

Q. What was his address?

A. It is in the 3000 block, about 3023, I think, East Sprague?

Q. East Sprague?

A. Yes, sir.

Q. Were you successful in making any sales there?

A. I sold him a couple novelty items that were not carried by Leo Hobson. That is all the sales I was able to make there.

[fol. 1618] Q. Did Mr. Horwath make any statements to you?

A. He did.

Q. About your sales efforts? What did he say?

A. He told me, in view of the fact that I lived in the vicinity in which he operated his station, he would like to buy from me, but was unable to and still comply with the Richfield rules.

Mr. Hall: Your witness.

Mr. Paradise: May it be stipulated by the plaintiffs, Mr. Hall, that Mr. Horwath, concerning whom the witness has already testified, is also an L-O operator at the location mentioned?

Mr. Hall: Yes.

Mr. Paradise: And he is operating under a form 542 lease, print date of 1-47?

Mr. Hall: I can't assure you of the print date.

Mr. Paradise: I will show you.

Mr. Hall: I assume it is correct.

(The document was handed to counsel.)

Mr. Hall: He has operated under two different leases but, as I understand, they were both 542.

Mr. Paradise: And that he was so operating under this lease as an L-O operator at the time this witness has testified to?

Mr. Hall: Yes.

[fol. 1619] Mr. Paradise: Thank you.

Cross-examination.

By Mr. Paradise:

Q. Your present occupation, Mr. Green, is as a salesman for Firestone Stores?

A. Yes, sir.

Q. That is, the Firestone Tire Company?

A. Yes, sir.

Q. The Firestone Tire Company maintains retail stores?

A. Yes, sir.

Q. The Goodyear Tire Company maintains retail stores?

A. Yes, sir.

Q. In the course of your activities as a salesman, have you attempted to sell Firestone Tires to the Goodyear stores?

A. Not to the Goodyear stores.

Q. During the course of your occupation, has the Goodyear Company attempted to sell Goodyear tires to the Firestone stores?

A. Not to my knowledge.

Mr. Paradise: That is all.

Mr. Hall: That is all. Thank you very much, Mr. Green.

The Court: You may be excused.

[fol. 1620] The Witness: Thank you.

(Witness excused.)

Mr. Somerville: The government calls as its next witness George A. Bauer.

GEORGE A. BAUER, called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination:

The Clerk: Your full name, please.
The Witness: George A. Bauer, B-a-u-e-r.
The Clerk: Thank you.

By Mr. Somerville:

Q. What is your name, sir?
A. George A. Bauer.
Q. Where do you reside?
A. 6281 North Bion Avenue, San Gabriel, California.
Q. Mr. Bauer, have you at any time been the lessee of a Richfield service station?
A. Yes, I have.
Q. When did you first become a lessee of a Richfield Service station?
A. September 3, 1949.

Mr. Somerville: May it be stipulated, counsel, that [fol. 1621] George A. Bauer entered into a Form 542 lease, print date 1-49, which is the same form of lease as is embodied in Government's Exhibit 1-G?
Mr. Paradise: So stipulated. That is an L-O form of lease?
Mr. Somerville: Yes. May it be also stipulated that this lease was entered into October 1, 1949, and that such lease contains a provision for a rental of $125, plus one cent per gallon for each gallon in excess of 12,500 gallons?
Mr. Paradise: Yes, so stipulated.
Mr. Somerville: May it be further stipulated that Mr. Bauer entered into a Form 542 lease on September 3, 1949, print date 1-49, containing a provision for a flat rental of $175 per month.
Mr. Paradise: That appears to be the case, counsel. Do both of these leases cover the same location?
The Witness: Yes.
Mr. Somerville: Yes, they do. May the record also show that there is a Form 542 lease executed on October 6, 1949,

containing the provision of a rental of $125 a month, plus one cent per gallon for each gallon in excess of 12,500 gallons? Is that so stipulated, counsel?

Mr. Paradise: Yes. Yes, there appears to be an amendment executed by Richfield and Mr. Bauer to the effect that you mentioned, and which is dated October 6, 1949. I don't [fol. 1622] quite understand it, however, because there also appears to be a separate lease covering the same location, dated October 1, 1949, and containing the same rental as you have last mentioned, that is, $125 plus one cent per gallon over 12,500 gallons. Maybe the witness can clear that up for us.

Mr. Somerville: All right.

By Mr. Somerville:

Q. Mr. Bauer, at the time you entered into this lease, would you indicate to the court the rental that you paid and the date that you first entered into a lease? Will you look those over (handing documents to witness)?

A. Well, this last document here, the one that is pinned to the back, is dated September 3, and was the original document, calling for—wait a minute—calling for $175 a month flat rental.

Q. Did you pay $175 a month rent under that lease?

A. I did.

Q. For how long did you continue to pay that rental?

A. I believe it was up to—up until October 1st, when they gave me a different lease, calling for $125 a month plus one cent per gallon on all over 12,500 gallons purchased in a month's time.

Q. Thereafter, Mr. Bauer, what rental did you pay?

A. $125 per month, plus one cent per gallon over 12,500 [fol. 1623] gallons purchased.

Q. When you took over this station, what gallonage were you pumping the first month?

A. The first month that I was in there we pumped 12,300, approximately.

Q. Then did the gallonage increase?

A. Yes, it did.

Q. What would you say would be the maximum gallonage during your period?

A. On my sales or purchases from the company? Which are you referring to?

Q. The maximum gallonage upon which rentals would be figured.

A. That would be the purchases from the company. It would be 16,800, I believe. The gasoline was delivered in 4,200-gallon lots, and there would be four deliveries. That would bring it up to 16,800.

Q. Mr. Bauer, did you purchase gasoline and other petroleum products from Richfield?

A. Yes, I did.

Q. At the time you entered into the station, were you told where you could purchase these supplies?

A. Yes, I was told where I could purchase the gasoline and oil.

Q. Where did you purchase it?

[fol. 1624] A. From the Richfield Oil Corporation.

Q. At the time you entered into the station, who installed you, or who turned over the premises to you?

A. The merchandiser's name at that time was Mr. Ed Weir.

Q. Mr. Ed Weir. At the time the premises were turned over to you, was there anything said about your delivering or selling automotive accessories through that service station?

A. Yes.

Q. What was said concerning that?

A. Well, that we were expected to sell accessories, that you wouldn't make a living on gasoline and oil alone.

Q. Were you told what accessories you should handle?

A. There was an approved list shown to me of the articles that were approved by Richfield, and that could be handled in the service station, could be sold through the service station.

Q. Were you told where to obtain your supply of those approved accessories?

A. I was told where I could obtain the supply of those approved accessories, and I was taken over and introduced to Mr. Jimmie Jones, the then TBA dealer in the Pasadena area.

Q. Thereafter did you purchase approved accessories [fol. 1625] from Mr. Jones?

A. From Mr. Jones I purchased approved accessories, yes, sir.

Q. Mr. Bauer, did you invest something in the station? Did it represent an investment when you took over the station?

A. Yes, sir.

Mr. Paradise: I object to the question in the form in which it is placed, as a conclusion as to whether it constituted an investment in the station.

The Court: Overruled.

By Mr. Somerville:

Q. Just tell us of the investment that you had in that station, please.

A. Over all or from the—what I bought from Mr. Meadowbrook? Which figure did you want?

The Court: Let's start with what you bought from Mr. Meadowbrook.

The Witness: From Mr. Meadowbrook it cost me in the neighborhood of $2,000.

By Mr. Somerville:

O. Who is Mr. Meadowbrook?

A. Mr. Meadowbrook was the former owner of that certain Richfield station that I had.

Q. What did the purchase consist of?

A. It consisted of gasoline, both the regular and the ethyl, and lubricating oils, greases, accessories, spark plugs. [fol. 1626] Q. Did you have to put out any money for any other materials or products or equipment?

A. Oh, yes. The station was not well equipped at all, and I did immediately purchase four to six hundred dollars worth of equipment or merchandise the following day through Mr. Jones.

Q. Mr. Bauer, what were the hours of your operation?

A. We opened at 7:00 in the morning and closed at 9:00 at night, and I ran a test on it by having it open from 7:00 in the morning until midnight for approximately a month and

it proved that it was not worth-while to hold it open later than 9:00 o'clock, except possibly on Saturday evening, Saturday night.

[fol. 1627] Q. Did Mr. Weir instruct you as to the hours you were to remain open?

A. I wouldn't say that he instructed me as to the hours I was to remain open. He told me what hours there had been before I took over the station and that was from 7:00 in the morning until 9:00 at night.

Q. Then was it your voluntary action to remain open the hours you did?

A. That's right.

Q. Did you employ any help?

A. I did.

Q. Were you reimbursed in any manner by Richfield for that?

A. Oh, no, sir.

Q. How much help did you employ?

A. I had three steady employees and two part-time employees.

Q. How many hours did you spend yourself in running this business?

A. My wife can answer that for you better than I can.

Q. Well, I think we will substitute you for your wife here, Mr. Bauer?

A. Oh, my hours were very uncertain. By that I mean I was there very definitely every morning by 8:00 o'clock. Some mornings I opened up the station, and I tried to get away from the station by 6:00 o'clock at night, but I was [fol. 1628] very unsuccessful at it, and in many, many instances, when I did get home from my business, I would be called back to the station to perform some service on a customer's car of a mechanical nature which the attendant was not able to do, and that would be seven days a week.

Q. Did you do anything to develop sales at your station?

A. Yes.

Q. What did that consist of?

A. It consisted of advertising in the local paper. It consisted of penny postal cards that were printed up by the San Marino paper and mailed to a mailing list, of which part of that mailing list was there when I took over, and

the other part of the mailing list was gotten up by my wife and myself by driving through the neighborhood and obtaining the names and addresses from the different mail boxes.

Q. You were trying to develop this business?

A. Yes, sir. Plus solicitation throughout the neighborhood, where it was permitted.

Q. Calling your attention to TBA products, could you tell the court just what products generally were approved by Richfield Oil Corporation?

A. I will try. I can tell you some of them.

Q. Just name some.

[fol. 1629] A. Mack's products, which consist of radiator polishes and radiator rust preventive. Goodyear products throughout. We were presented with a Goodyear catalog, and you could buy through your TBA dealer anything that carried a Goodyear name. And there were sealed beam headlights, and I have forgotten which manufacturer's name was approved. And Goodyear fan belts, Goodyear radiator hose, Goodyear curved hoses, Champion spark plugs, and I believe it was Everready bulbs for the automobiles.

Q. Was Mr. Jones the TBA distributor during your entire period at this station?

A. No. Mr. Jones sold out to Mr. Charles Cole, who is now the TBA dealer for the Pasadena territory.

Q. While Mr. Jones was TBA distributor, did you purchase all of your automotive accessories from him?

A. I purchased 99 per cent of my merchandise from Mr. Jones, yes.

Q. Did you continue to purchase approved accessories from Mr. Cole?

A. For a short period, yes.

Q. After that short period, what did you do with respect to products?

A. I was buying some of my merchandise from Mr. Cole. I was buying some of it from a chap named Ernie Woltman, and from the Anderson Automotive Supply Company, located on California Boulevard in Monterey Park.

[fol. 1630] Q. Were those sources also approved TBA distributors?

A. They handled approved TBA items, and they handled unapproved TBA items.

Q. You didn't understand my question. Were those other sources of supply approved by Richfield?

A. No, sir.

Q. The only one then being Mr. Cole?

A. That's right.

Q. I would like to have you explain to the court whether the items which you were purchasing were items that were directly competitive with some items that Richfield supplied through Mr. Cole.

A. Yes, they were competitive.

Q. Such as?

A. Well, in some instances it might be the same product. Take Macks——

Q. Designate the product. Was it tires, batteries, or fan belts, or something else?

A. If I can do that. Mr. Cole would handle, as an illustration, Macks 13, and I could buy that from Ernie Woltman at a cheaper figure than I could buy it from him.

Mr. Cole would handle Goodyear fan belts, and the Anderson Automotive Supply and Ernie Woltman both handled Gates fan belts, and I would buy from them.

[fol. 1631] There was a specific instance here where I wanted to buy a complete set of curved hoses that would fit about 90 per cent of the manufactured automobiles on the street today. By that I mean the different makes of automobiles. I tried to buy it from Charlie Cole, who was unable to supply me with that set-up, and I knew I could get it through Gates. Gates manufactured it, and I made several attempts to purchase it from them, and was unable to get it, and I later bought a complete set-up of these curved hoses put out by the Gates Rubber Company, and installed them in the service station on the proper hooks, and so forth, for display. And I also bought some Gates hose from some of the other jobbers instead of the Goodyear hose. I never did deviate on the batteries. I stayed with the Goodyear batteries all the way through, Goodyear and Resolute batteries.

Q. Mr. Bauer,——

A. Yes?

Q. Would you say that you were stocking a substantial amount of competitive products?

A. Yes.

May I ask, do you mean products that are in competition with the approved products?

Q. Yes.

A. Not to any great extent. The majority of them were approved items.

[fol. 1632] Q. Did you at any time have anyone from Richfield call to your attention the fact that you were purchasing these competitive products?

A. Yes, indeed.

Q. Would you relate to the court just what experiences you had in that regard?

A. Well, the merchandiser, Phil Zimmerman, who subsequently took over that territory from Ed Weir, very shortly after he had taken over the gas station there, came in and told me very definitely that they were not approved items, and he did not want those items in the station. And when I stop to think of it, there were several items, such as I handled ignition parts, Delco-Remy and Auto-Lite ignition parts, and they wanted me to handle a product called Guaranteed ignition parts, which is not what is called a genuine part. It is a replacement of it. And I handled the Gates curved hoses, and I handled some other items other than approved items, and I was told, as I mentioned before, that they were not approved, and that they should be disposed of and taken out of the station and replaced with Guaranteed products, which I refused to do.

Q. Did the merchandisers check your station frequently?

A. I would say yes, they did.

Q. And would comment on these competitive products you have described?

A. Practically every time they were there, yes.

[fol. 1633] Q. Would anyone from Richfield call your attention to the amount of purchases you were making from Mr. Cole?

A. Very definitely, yes.

Q. And in connection with those purchases would you

fix the relationship to place and time and the parties involved as to just what happened?

A. Well, Mr. Zimmerman—that was the merchandiser—told me one day there after I had stopped buying from Charlie Cole——

Q. When would this be, approximately?

A. Oh, let me think for a minute. March, February or March, possibly the 1st of April.

Q. Of the last year?

A. Of 1950, yes. —told me that if I didn't buy through the TBA dealer and if the Richfield Oil Corporation didn't enjoy the profit that they would ordinarily make from the items that I had bought from the TBA dealer, that the Richfield Oil Company could and would possibly raise my rent, in other words, from $25 to $50 a month, depending on what they figured was due them, so to speak, from the sales that should have been had, as they felt, from Charlie Cole.

Q. Was anything said about the lease that you were operating under?

A. Oh, yes. I was told several times before this particular instance that I mention that if I didn't abide by the [fol. 1634] so-called rules and regulations and purchase my articles from the TBA delegated, and co-operated, as they put it, with Richfield, that they would get somebody in that station that would co-operate.

Q. By the way, Mr. Bauer, was your attention called to the 24-hour clause in the lease at the time of your possession of the station was turned over to you?

A. Not to my recollection.

Q. So far as you know, this was the first mention that was specifically made of the fact that your lease might be cancelled?

A. That was the first mentioned that the lease could be cancelled, yes.

Q. Would you tell us whether or not you handled competitive oils?

A. Yes, I did.

Q. And did you experience any difficulty with respect to handling those products?

A. Yes, I did.

Q. Did you handle them openly, that is, did you display them? Did you put them where customers could see them?

A. No, definitely not.

Q. Did someone from Richfield call your attention to the fact that you were handling these oils?

A. Yes. Mr. Zimmerman called my attention to the fact that I was handling Quaker State and Pennzoil, and defi-
[fol. 1635] nitely was not allowed to do such things as that.

Q. When did this occur?

A. Well, that would have occurred in the early part of 1950, maybe March or April, maybe before that. I can't recall exactly.

Q. What did he tell you?

A. He told me I would have to dispose of it. First of all, he said, "You should not do that." And I said, "So what?" but I continued to do it. I continued to do it, and continued it a matter of a month or so. And apparently there was a drive on then because he came around and very definitely instructed me to get rid of that oil, and I very definitely told him that I had no intentions of getting rid of it or disposing of it. The following——

Q. Did you——

A. Pardon me.

Q. Did you continue handling it?

A. May I continue on with what I was going to say in answer to your question, sir?

Q. I am sorry.

A. The following day when I came in to work at 8:00 o'clock in the morning I found that Mr. Paul Shimus, an employee of mine, had to avoid any further trouble taken it upon himself to take the oil out of the station and put it in the back of his car, and later put part of it in the
[fol. 1636] back of mine, so that we would have to sneak it to our customers.

Q. Now, Mr. Bauer, did you continue handling outside oils after that occurrence?

A. After that the amount of oil was disposed of that I had on hand, I did not carry any other off-brand oils.

Q. Did you advertise in any manner the approved products by signs on the premises?

A. Yes. There were Goodyear signs and Goodyear tire

signs up there, and I remember one time when a Goodyear sign man came along and said, "You don't have a Goodyear battery sign out, so I am doing to put one up for you." I said, "All right." And he went out and put one up on one of the flood light poles.

Q. Did you have any signs advertising competitive products?

A. Yes, I had two signs advertising "Granatise". That is a product that you put on a car with a buffer. It is a polish, so to speak.

Q. Where were those signs?

A. They were tied to a fence. I had a three-foot high wire fence on the south boundary of the property and on the west boundary of the property, and the signs were about three-foot long and two and one-half foot high, a cloth sign with brass bromets in there, and I had them tied to the—one of them was tied to the south fence and one [fol. 1637] was tied to the west fence, so that as the people would pull into the pumps they would be facing these signs and could see them and very definitely understand that we did Granatise work there.

Q. Was anything done with respect to those signs?

A. Yes. I was at the bank one morning and when I came back I found Mr. Zimmerman there, folding up some blue pieces of cloth. And I said, "What was that?" He referred them to me and said, "Those are your Granatise signs. I have just taken them off the fence and you are not to put them back in place."

Q. Did you continue after this time to handle competitive TBA products?

A. Yes, sir.

Q. And did you hear any further from any representative of Richfield concerning your handling of them?

A. Constantly.

Q. Are you still operating that Richfield station, Mr. Bauer?

A. No, sir, I am not.

Q. Did you leave voluntarily?

A. No, sir, I did not.

Q. Will you tell us what happened?

A. Well, on the 7th of July of last year I received a call that my son was quite ill in Mason, Michigan with spinal

[fol. 1638] meningitis or bordering on it. And within two hours after I received that call my wife and I were on our way to Mason, Michigan. I left on the 7th and came back on the 28th, I think. I went into the station on the 28th or 29th, something like that. It was on a Monday, nevertheless, and I was checking out the Sunday's receipts when two gentlemen walked into the station and interrupted my work, saying, "I hear you want to sell your gas station." And I turned around and said to them, "Well, that's news to me. I don't know anything about it." And I asked them then who gave them that information and they said, "Well, a friend of ours. You just wouldn't know." And turned around and walked out. And having had the difficulty that I had had up to this point with Richfield, I figured that something might be wrong. So I tried to contact Mr. Zimmerman at the Pasadena office and I was unable to reach him there. I did, however, talk to Mr. Burgner, a branch manager of the Pasadena branch. I told him what had taken place and asked him what there was in the wind, if anything. He said, "Yes, there was something in the wind with them." So apparently Mr. Harold Blair who had stopped in and that they had his application, his credit application at the downtown office, going over it, and if his credit was approved, that he would take over my service station. Well, there was nothing I could say about that at the time.

[fol. 1639] Q. Did you thereafter receive any written notice of termination?

A. Well, that is—the answer is yes. There is a story with it, if you want it, but the answer is yes.

Q. Was there any difficulty concerning your getting out?

A. Yes, there was. I later talked to Phil Zimmerman and asked him what the score was. And he said, "Well, that is it. You are going to be checked out on such and such a date."

Q. Did he tell you why?

A. For the lack of co-operation. And I asked him what he meant by "cooperation" and he said, "Well, you just won't co-operate with us in buying your articles from the TBA dealer." He said, "I have told you before that you will either buy them from him or we will replace you, and

we are going to replace you." I said, "That is fine." And he told me that they would be, oh, about the 7th of August, I believe, to check me out, and I let him walk out that day and a couple of days later I called their office and asked them where my 24-hour notice was. And that afternoon Mr. Zimmerman came over with a different type of a form, not a 24-hour notice. I think it is an agreement of some sort wherein I relinquish the property back to the Richfield Oil Corporation, and asked me to sign it, and I refused to sign it. And that carried on for an hour or so and he finally left without it signed.

[fol. 1640] Q. Then did you receive the notice?

A. No.

Q. Did you eventually receive the notice?

A. I eventually received the notice, yes.

Q. Then did you have to turn the station over? Then did you have to vacate the premises?

A. Yes, after the 24-hour notice was received.

Q. Were you permitted to sell your inventory of merchandise to the new operator?

A. Yes.

Q. You had competitive items in that merchandise, did you?

A. Yes.

Q. Who supervised the sale to the new operator?

A. Mr. Zimmerman, Mr. Phil Zimmerman.

Q. Were you permitted to sell it without his supervision?

A. It didn't appear that I was able to or permitted to, because he was there on every move that we made. As an illustration, when we talked about—I am speaking of the new buyer now—when the new buyer and I talked about the Gates curved hoses, very immediately Mr. Zimmerman popped up and said, "That is not an approved item." And as we would go along with some other supplies, with the Seal Beam, which are standard equipment of Chrysler [fol. 1641] brakes, this came up in question and that was not an approved item according to Mr. Zimmerman. Like with the Delco-Remy and Auto-Lite Delco ignition parts, they were not approved items. And that went on along with some other polish that I had in there, that was not an approved item as far as Mr. Zimmerman was concerned,

and kept telling Mr. Blair there was not an approved item. Consequently I did not sell all of the merchandise I had in there.

Mr. Somerville: I think that will be all, Mr. Bauer.
The Court: All right, cross examine.

Cross-examination.

By Mr. DeMartini:

Q. At the time that you first talked to any Richfield representative—when did you first talk to any Richfield representative about this station prior to your installation, Mr. Bauer?

A. Well, I imagine it would be a week, thereabouts, prior to September 3rd.

Q. Of 1949?

A. Yes, sir.

Q. To whom did you talk?

A. To Mr. Ed Weir.

Q. Was there any conversation at that time with respect to your operations of the station and the maintenance thereof or anything of that nature?

A. Yes.

[fol. 1642] Q. Did they tell you that you were required to maintain it in accordance with Richfield's policies and practices?

A. Yes.

Q. Did they tell you you had to wear a uniform?

A. Yes.

Q. You s-ated, Mr. Bauer, that you did not know that the lease contained a 24-hour provision.

A. I did not make that statement.

Q. I am sorry. Will you repeat what statement you did make in that respect?

A. I was asked the question, as I recall it, that when Phil Zimmerman or Mr. Burgner told me they were going to check me out, was that the first I knew of being checked out, which would lead you to believe that I didn't know about the 24-hour notice. I read that after it was signed. I knew it was in there.

Q. Did you know then that the 24-hour lease was in there?

A. After I signed it I received my copy of it, yes, sir.

Q. Would you fix that as on or about September 3 of 1949?

A. No, it would not be then, because it was two or three weeks before I ever got my contract back from the Richfield Company.

The Court: At any rate, when they gave you notice, when [fol. 1643] they talked about replacing you and this man came, Blair you say was his name, and talked about selling the station, then it was that you asked where the 24-hour notice was?

A. That is right, sir.

The Court: In other words, up to that time they were just going along as though they were going to put you out and did not even give you notice?

The Witness: That is correct.

The Court: Then you got it?

The Witness: I got it.

The Court: With a vengeance.

The Witness: No, I just got it, sir.

The Court: All right.

The Witness: Yes, sir.

By Mr. DeMartini:

Q. I show you these leases again, Mr. Bauer, the original lease, if I may call it that, dated September 3, 1949. It called for what amount of rent?

A. $175 a month flat rental.

Q. Then there are two documents that are rather difficult to explain, one dated October 1, 1949 and the other dated October 6, 1949, which contain certain rental provisions. Do you know what those provisions were?

A. They call for $125 a month rental plus one cent per gallon of gasoline consumed over 12,500 gallons per month. [fol. 1644] Q. What was your gallonage at that time?

A. At what time, sir?

Q. At the time that this amendment was signed?

A. We had gone through—I had gone through my first month and come up, as I recall it, with 12,300 gallons of gasoline sales on the board.

Q. So in effect it amounted to a reduction in rent, did it not?

A. Yes.

Q. As of that month?

A. Yes.

Q. Were you called upon by merchandisers from time to time?

A. Yes, sir.

Q. You have already stated that these merchandisers complained with respect to the quantity of competitive merchandise that you had on hand from time to time?

A. Not particular about the quantity of competitive merchandise I had on hand, but simply because it was competitive merchandise and because——

The Court: Of its being there, not the quantity?

The Witness: That is right, and because I did not buy it from their TBA dealer.

By Mr. DeMartini:

Q. Did they complain about anything else such as cleanliness of the station at any time?

[fol. 1645] A. My reports show—I suppose you know that they read on a percentage basis there.

Q. Yes.

A. My reports will average, I would say, 80 to 90 per cent from a cleanliness standpoint.

The Court: All right.

By Mr. DeMartini:

Q. While Mr. Dixon is examining this I will ask you one further question. On or about or sometime in the month of August 1950, do you remember a service station transaction with a Mrs. Keller whereby you apparently lubricated her car and changed her oil, etc.?

A. I remember that, yes, sir.

Q. Was there a dispute with Mrs. Keller with respect to what services you had performed?

A. Between Mrs. Keller and myself?

Q. That is correct.

A. No, sir. The dispute was between Mrs. Keller with

the Richfield Oil Corporation. She never did come back to me and open her mouth or say a word to me. Pardon me.

Q. You would not state, then, that it was a fact that Mrs. Keller claimed that there were certain unauthorized services for which you charged her to the extent of $5.72?

Mr. Somerville: I will object to that.

The Court: That is all right. They have a right to ask him to contradict it. Go ahead.

[fol. 1646] The Witness: Would you mind asking that again?

The Court: Read the question.

By Mr. DeMartini:

Q. Have you any knowledge of the fact that Mrs. Keller claimed that you overcharged her with respect to unauthorized services to the extent of $5.72?

A. I have that knowledge, yes, sir.

Q. And do you know how that item was disposed of?

A. I have an idea. I am not certain of it. But I have an idea how it was disposed of.

The Court: Tell us about it.

The Witness: As I understand it, Richfield Corporation made an adjustment to her for that amount of money.

By Mr. DeMartini:

Q. And you in turn received the full amount that you charged her, did you not?

A. Yes, sir.

The Court: You say she never complained to you?

The Witness: No. She went direct to the Richfield Oil Corporation.

The Court: For the overcharge?

The Witness: That is right, your Honor. Yes, sir, that is right, your Honor. It was a credit charge to the account.

The Court: All right. Did the Richfield ever explain it to you?

The Witness: Yes. That was quite a subject. Mr. Zimmerman was in and we went over and had a cup of coffee [fol. 1647] and we talked about it. I think this was imme-

diately after I came back from Michigan. However, this had happened before I had gone to Michigan and I personally am the one that picked up her car. We had given her all kinds of service. She was a very nice southern lady with a southern drawl and she wanted some service, but that is beside the point. But I drove her back home and drove the car back to the station. While at her home, in front of her house, I personally had a regular lube sheet that we carry along, and asked Mrs. Keller whether she would like to have this done, whether it was time for that, and opened the door and pointed to the sticker on the door, recommending different things to her, and I was authorized by her to do everything, every single, solitary thing that I did on that car.

The Court: So the only question was, she did not complain that you did not do it, but she complained she did not want it done?

The Witness: That is right, sir. That is correct.

By Mr. DeMartini:

Q. And you said that Richfield settled that claim with her, to the best of your knowledge?

A. I believe they did.

The Clerk: These four sheets will be Defendant's Exhibit F for identification.

The Court: All right.

(The documents referred to were marked Defendant's Exhibit F for identification.)

[fol. 1648] By Mr. DeMartini:

Q. I show you Defendant's Exhibit F for identification, Mr. Bauer, consisting of a letter dated March 3, 1950 directed to you by Richfield Oil Corporation and accepted by you. That is your signature, is it not?

A. Yes, sir.

Q. Also, instrument entitled "Gasoline Inventory" signed by you and Mr. Zimmerman, which I believe was a part of the first instrument, is that correct?

A. No.

Q. Was it executed about the same time?

A. No.

Q. It has the same date.

A. Oh, the first instrument. Oh, this one here. I thought you were referring to that one.

Q. Yes.

A. Yes, sir.

Q. And a third instrument dated May 25, 1950 which purports to be signed by Richfield Oil Corporation and it also bears your signature, does it not?

A. That is correct.

Q. A fifth instrument dated August 14, 1950, signed by Richfield Oil Corporation, which also purports to bear your signature.

A. That is correct.

Q. Are you familiar with those instruments?

[fol.1649] A. I am, sir.

Q. What do they represent?

A. They represent a rebate, so to speak, on gasoline when the price war was in effect here in Los Angeles area, a rebate for gasoline purchases from the Richfield Oil Corporation and rebated to me by the Richfield Oil Corporation in the amount of, I believe it is one and a half cents per gallon on the regular and two cents a gallon on the ethyl. That is right, in that instance.

Q. Then if I may lead you slightly, the second instrument, entitled "Gasoline Inventory" represents what?

A. The gallonage that was in the tanks in the ground, 13,00- gallons of ethyl and 672 gallons of high-octane on which they also refunded to me one and a half and two cents, respectively.

Q. I thought I referred to five instruments.

A. I thought you did, too.

Q. I guess I did not. Anyway, the instrument dated May 25, 1950 represents what, Mr. Bauer?

A. It represents an additional rebate by the Richfield Oil Corporation to me as a dealer because the price of gasoline was again lowered at my service station.

Q. And then the letter of August 14, 1950 purports to be a cancellation of the allowance, is that correct?

A. That is correct.

[fol. 1650] Q. And is it correct to state that those allow-

ances were given to you to meet competitive prices in your area?

Mr. Somerville: If the court please, we will object to this.

The Court: Overruled. He is telling us about a price war and that is what it means. Go ahead.

A. That is right. Would you ask me the question again?

The Court: Read the question to him.

(Question read by the reporter)

A. Yes.

Mr. DeMartini: I will offer the instruments into evidence, your Honor.

Mr. Somerville: If the court please, we will object to these documents going into evidence on the ground they are irrelevant and immaterial, and the price fixing is not within the scope of this complaint.

The Court: I know, but they bear upon the type of relationship that exists between the parties. Overruled.

The Clerk: Defendant's Exhibit F into evidence.

The Court: All right.

(The document referred to was marked Defendant's Exhibit F and received in evidence.)

Mr. DeMartini: That is all, your Honor.

The Court: Any redirect?

Mr. Somerville: Yes, sir.

[fol. 1651] Redirect examination.

By Mr. Somerville:

Q. Mr. Bauer, did you have to lower your prices in consideration of your receiving that reduction in rental?

A. Very definitely.

Q. Or in price?

A. Are you referring to these last instruments that I just saw?

Q. That is right, yes, sir.

A. Yes, sir.

Q. Was the rebate on condition that you do as Richfield instructed you in that regard?

Mr. Paradise: Wait a minute. That calls for the conclusion of the witness. If he is talking about a conversation that resulted in this——

The Court: We know what it is all about. You may answer. He is going into it. He is given it so as to meet the price war. Go ahead, tell us what it was given you for.

A. It was given to me to repay me for the price war, due to the fact that I had to lower the price on gasoline.

The Court: When you lowered it, you lowered to the standard table at that time in that district?

The Witness: That is right. It also lowered my profits, but they replaced part of it.

By Mr. Somerville:

Q. Mr. Bauer, what was your gallonage during the latter [fol. 1652] part of the period you were in the station?

A. Roughly 16,000 gallons a month.

Q. Therefore the $125 minimum did not represent the price that you were paying or the rental you were paying?

A. No, sir.

[fol. 1653] Q. It would be, roughly, $175 rent?

A. It would be, roughly, $160.

Q. I believe you testified you didn't get a copy of your lease until about three weeks after you began operating your station?

A. It seems to me it took a period before I received my copy of the lease.

Q. So that you had no knowledge of the 24-hour clause in the lease?

Mr. DeMartini: I object to that.

The Court: I sustain the objection. That is all right with women, because that is a typical woman's alibi, that she didn't read it. But I don't take much stock in a businessman saying he didn't read it. If he didn't read it, he is just out of luck.

He has testified that he knew it from the very beginning, that he was told in the conversation that if at any time he didn't like it he could quit. He himself testified to that, that he could quit and they would find him a buyer. So that is the pattern. He was told that he could be put out on 24

hours notice, and whether he remembers it was 24 hours or not makes little difference.

By Mr. Somerville:

Q. Concerning the notice counsel referred to that was served on you, was there anything said concerning the other form of agreement that was attempted—that your signature [fol. 1654] was attempted—I withdraw that question.

The Court: You will have to unwind yourself. Whenever I dictate and get into that situation, I just stop and unwind myself.

Mr. Somerville: We get wound up at this time of day, your Honor.

The Court: If you will stop I will give you a recess.

Mr. Somerville: One more question, your Honor.

The Court: All right.

By Mr. Somerville:

Q. I believe you testified that an attempt was made to secure your signature on a form of termination agreement rather than serving a notice upon you?

A. That is correct.

Q. Was there anything said at that time concerning the reason for the signing of that agreement?

A. No. It was just handed to me, and I was expected to sign it, which I didn't do, and nothing was said about it.

Mr. Somerville: That will be all.

Mr. DeMartini: Your Honor, I have just one more question, if you don't mind.

The Court: All right.

[fol. 1655] Recross-examination.

By Mr. DeMartini:

Q. I am afraid you are going to think it specious, but Mr. Somerville stated that when your gallonage was 16,000 gallons a month, you were paying in excess of $125 per month, or $160 a month approximately, weren't you?

A. That is correct.

Q. That was still less than the $175 per month that you were paying before the amendment of the rental; isn't that correct?

A. That is correct.

Mr. DeMartini: That is all.

The Court: All right. You may step down.

(Witness excused.)

The Court: We will take a short recess.

(A short recess was taken.)

The Court: Call your next witness.

Mr. Somerville: The government calls Mr. Mills as its next witness.

Harlan G. Mills, called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Your name, please?

The Witness: Harlan G. Mills.

[fol. 1656] Direct examination.

By Mr. Somerville:

Q. What is your name, sir?

A. Harlan G. Mills.

Q. Mr. Mills, where do you reside?

A. 2604 Ross Avenue, Alhambra.

Q. Alhambra?

A. Yes.

[fol. 1657] Q. Mr. Mills, have you ever been in the business of operating a retail service station?

A. Yes, sir.

Q. When is the first time you operated a retail service station?

A. As an employee in 1921.

Q. The first time you operated not as an employee, but operated the service station?

A. In the latter part of the 1920's as an officer in the Duncan-Mills Corporation.

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Q. Where was the location of that service station?

A. 4 East Huntington Drive, Alhambra.

Q. Whose petroleum products did you handle at that time?

Mr. Paradise: If the court please, I assume this is preliminary,——

Mr. Somerville: Yes, it is.

Mr. Paradise: —but the defendant objects to anything prior to the incorporation of this defendant, which occurred on March 12, 1937, which was the commencement of its doing business as indicated by a stipulation between counsel.

Mr. Sommerville: This is entirely preliminary. We don't contend that any arrangement prior to that period is involved here.

By Mr. Somerville:

Q. Did you hear the question?

[fol. 1658] A. The split pump account carried various products like, for instance, we had Hercules, Eureka, Wilshire, Union, Standard, and then later one pump of Richfield.

Q. How long did you continue to operate that split pump?

Mr. Paradise: I submit this is beyond the preliminary stage. This is going into practices, and I move that the answer of the witness be stricken.

The Court: I am not going to allow you to go too far into that. We are dealing with some current practices, and going back into history isn't necessary for the determination of the issues in this case.

Mr. Somerville: Yes, your Honor. I didn't intend to go into it.

The Court: There is a lot of ancient history we do not need to go into. I participated in some very unpleasant history related to the predecessor of this company, as both sides know. So let's not do that.

Mr. DeMartini: I was a witness in that case, your Honor.

The Court: Let's forget that. To me it was a tragic thing.

Mr. Somerville: Yes, sir, it was.

By Mr. Somerville:

Q. I believe you testified that the location of the split pump station was at 4 Huntington Drive in Alhambra?
[fol. 1659] A. 4 East Huntington Drive.

Q. At some time did that station become a Richfield station,—handle only Richfield gasoline?

Mr. Paradise: Objected to as immaterial. I think counsel should now confine himself to things which occurred subsequent to the incorporation of this defendant.

Mr. Somerville: This matter distinctly relates to a service station within the period at the same address and these questions are just preliminary and have a direct bearing on the issues here.

The Court: Let's get down to more recent times.

By Mr. Somerville:

Q. Directing your attention to the service station at that location, would you explain to the court the first time that you dispensed the Richfield brands of gasoline?

Mr. Paradise: Objected to for lack of foundation, unless counsel merely directs his question and limits his question to a time subsequent to the incorporation.

The Court: Evidently he has gotten hold of an old-timer with the company. So let's get it over with and get down to more recent times. Give us the date of the lease. Get down to more recent times.

The Witness: The station handled 100 per cent Richfield products, I would say, somewhere in the late 20's.

By Mr. Somerville:

Q. Did you subsequently have a sub-lease from Rich-
[fol. 1660] field?

A. No. If we are talking about the original 100 per cent deal, no. We had a marketing agreement.

Q. Let's develop this. I want to get down to the time here when you operated a station on a lease by Richfield to you. But, first of all, with respect to the property here, who owned the property back at the time you first handled Richfield gasoline?

Mr. DeMartini: I am going to object, your Honor. Counsel can start with the date of the incorporation of this corporation.

The Court: In the case of this witness, who has been connected with the company so long, why don't you start with a date and ask him specifically as to that date? They will not object if you lead him. You know the date.

[fol. 1661] Mr. Somerville: Counsel, will you stipulate that Mr. Harlan Mills—

(Counsel conferring briefly.)

Mr. Somerville: Counsel, will you stipulate that Mr. Harlan B. Mills had a form 542 lease, which is the same form of lease as Government's Exhibit No. 1, dated August 16, 1937 and containing a provision for a rental of $200 per month plus one cent per gallon after 20,000 gallons?

Mr. DeMartini: It is dated August 16, 1937. We so stipulate.

The Court: All right. Now, we have a date to start from.

Mr. Somerville: And will it be further stipulated that a subsequent lease was entered into between Richfield and Harlan B. Mills dated April 15, 1943, bearing print date April 1942, Form 542?

Mr. DeMartini: I will stipulate that it is on the form attached to our stipulation bearing the same print date.

Mr. Dixon: It is also, I believe, Government's 1-C, is it not?

Mr. Paradise: No.

Mr. Dixon: Date 8-42 is Government's 1-C.

Mr. DeMartini: What was the date of that second one?

Mr. Somerville: The second one is 4-42.

Mr. DeMartini: Oh, I am sorry.

By Mr. Somerville:

Q. Mr. Mills, calling your attention to August 16, 1937, [fol. 1662] is that approximately the time that you entered into the sale for Richfield gasoline at this location, when it was leased from Richfield?

A. First, in 1936, I believe.

Q. 1936?

A. Not as a lease, no.

Q. Calling your attention to this particular period, who owned this property originally or who held the——

A. Richfield held the master lease.

Q. And had you at any time held the master lease on those premises?

A. No, sir.

Mr. Paradise: Counsel's question is obviously directed to a time prior to 1937.

The Court: I think he is taking a lot of time arguing about these things. Let us get over these preliminary questions and get down to more recent dates. Go ahead, tell them.

The Witness: In 1936 I held the master lease on the station.

By Mr. Somerville:

Q. Were you instrumental in acquiring the lease from the property owners for Richfield?

A. I was.

Mr. DeMartini: I will object to that as being immaterial, your Honor.

The Court: Overruled. Let us get down to date.

[fol. 1663] By Mr. Somerville:

Q. Calling your attention to that lease, Mr. Mills, does that represent the entire agreement or agreements that were entered into between you and Richfield at that particular time?

A. Yes.

Q. I am referring now to the lease dated August 16, 1937.

A. Yes, that does.

Q. Are you familiar with the term provided for in that lease?

A. I am.

Q. And what was that term?

A. Well, it calls for a base rental and——

Q. No. I am talking about the term the lease ran or the provisions for termination.

A. Well, is this the six months or the 24-hour one? Point that out. Six months termination.

Mr. Paradise: If it will save time, Mr. Somerville, we will

stipulate that that could be only on six months notice and the form so provides.

The Court: All right.

Mr. Paradise: No. I mean it could be terminated on 30 days notice every six months.

By Mr. Somerville:

Q. Subsequently did you enter into this revised form dated April 15, 1943 containing a 24-hour termination pro-
[fol. 1664] vision?

A. That is right.

Q. Now, with respect to this service station at the time you commenced operating in 1937 under this lease, did you invest any money in the business?

A. I did.

Q. For operating that service station?

A. I did.

Q. And what was your investment? What did your investment consist of?

A. It consisted of merchandise, salable merchandise and a small amount of equipment.

Q. And what would you estimate your investment to be?

A. Too long ago. I wouldn't estimate it.

Q. At the time you took over the station did you have any established accounts? I am talking now about customers purchasing petroleum products and automotive accessories?

A. Yes, sir.

Q. Those were accounts that you sold prior to the time that you commenced operating under this lease?

A. Yes, sir.

Q. And at this particular time was anything said to you concerning the handling of automotive accessories at this service station?

Mr. DeMartini: Said by whom?

By Mr. Somerville:

Q. Tell us whether there were any conversations with any
[fol. 1665] official or representative of Richfield Oil Corporation regarding the handling or selling or purchasing of automotive accessories at this station?

A. The 1930 document—the 1937 document?

Q. Yes, sir.

A. Yes, there was provision made for that.

Q. A provision made for it, you mean an oral provision?

A. Tissue paper riders on my contract.

Q. Do you have those contracts available?

A. About three or four years ago we destroyed all of our old documents.

Q. When you referred to tissue paper riders are you referring to riders on this form 542 lease dated in 1937?

A. Yes.

Q. And what was the provision contained in this rider?

A. That allowed me to sell competitive oils and accessories, and named the per cent that was allowable.

Q. Were there any conversations held with any representative of the Richfield Oil Corporation concerning this rider or any further explanation of it?

A. Yes, in the Richfield Building.

Q. And who were those discussions held with or conversations?

A. Mr. Maxwell, one of the Richfield attorneys. I can't recall his name.

Q. And what further was said or what was said at that [fol. 1666] time?

Mr. DeMartini: Will you fix the date of this, Mr. Mills? About when did this happen?

The Witness: The signing of the—before my sublease was signed with Richfield. I call this my sublease, this 1937 document.

The Court: All right.

By Mr. Somerville:

Q. Thereafter did you continue or did you sell some items competitive to those approved by Richfield?

A. Yes, sir.

Q. Under the terms of this rider?

A. Yes, sir.

Q. And within the limitations of the terms?

A. Yes, sir.

Q. Did this rider continue in effect throughout your tenure of the station?

A. No. Until the next lease agreement was presented.

Q. Until that lease agreement in 1943. And at that time was there any discussion held concerning the elimination of this rider?

A. Yes. I was told that——

Q. Would you tell us who the discussions were with, and I understand at the time of the new lease?

A. The discussion was with the merchandiser from the [fol. 1667] Pasadena branch who called on me.

Q. And what was said? What was the nature of the conversation?

A. Well, that the company had to have a uniform agreement among their dealers, and that if I would sign this I could go ahead and disregard the—I mean I could continue with the terms or the way I had been operating, because I said that was the only way in which I would sign it.

Q. How many hours did your station remain open, Mr. Mills?

A. Part of the time, 24 hours.

Q. How many employees did you have?

The Court: Where is your station located?

The Witness: Atlantic and Huntington Drive.

Mr. Somerville: I beg pardon.

The Court: Atlantic and Huntington Drive. I asked him where his station was out here.

By Mr. Somerville:

Q. How many men were employed by you upon the average through the period?

A. Well, from eight men during the 24-hour pre-war schedule until three during wartime, you know. The wartime schedule cut us all down.

Q. And who pays those men?

A. I did.

Q. Calling your attention to the electrical lighting system [fol. 1668] was there any electrical lighting system in that station?

A. Yes.

Q. Who paid for that?

A. I did. What do you mean, now? Pardon me.

Q. Will you describe just what it was?

A. It was a regular Edison current at the time I went in there.

Q. How much did you expend in the installation of that electrical system at the station?

Mr. DeMartini: May we fix the date for this, your Honor?

The Court: 1943, isn't it?

Mr. Somerville: 1943, I understood.

The Court: Aren't you talking about '43?

The Witness: Yes, talking about the period following '37. I don't get the last question clearly.

The Court: When did you install this electric system?

The Witness: I supplemented the Edison with a system of my own sometime in the thirties. I would not be able to establish the date.

The Court: Well, all right.

By Mr. Somerville:

Q. How much money did you spend in that, sir?

A. $1,820 for the machine and $350 for fluorescent lighting.

[fol. 1669] Q. Was there any particular advantage to you in selling competitive products?

A. Yes.

Q. And what was that advantage?

A. Additional margin of profit.

Q. Did you continue after this period of 1943 to handle these outside products?

A. I did.

Q. After this rider was eliminated?

A. I did.

Q. Did you continue to handle these competitive products in any substantial amounts?

A. Yes.

Q. At any time did you experience any difficulty from any representative of Richfield concerning your handling of this merchandise?

A. Conversation only.

Q. And what conversations did you have and with whom and when?

A. The merchandiser, from time to time.

Q. What was your answer?

A. From time to time.

Q. From time to time. What was the nature of those conversations?

Mr. Paradise: May we have a further foundation, if the [fol. 1670] court please, of names and dates?

The Court: Yes, let us have it. This man's activities cover so long a period of time.

By Mr. Somerville:

Q. Who were those conversations with?

A. Pardon?

Q. Who were those conversations with, sir?

A. Merchandisers.

Q. And when, specifically, as nearly as you can remember, did any conversation occur with the merchandisers concerning your handling of competitive products?

A. I would not be able to state specifically.

Q. Did it happen frequently? Did conversations happen frequently?

A. Shall we say once a month.

Q. Were they of the same tenor? Were they all concerned with the same subject matter?

A. Yes.

Q. What were those conversations on these frequent occasions?

A. Once a month——

Mr. Paradise: I do not want to be specious about this, your Honor, but here is a man who has been in this station for a great number of years. We would like to know the names of the men he talked to.

[fol. 1671] The Court: Yes, you ought to, because of that, you know, more particularly, because he has probably talked with dozens of them over that period.

By Mr. Somerville:

Q. Do you remember the names of any merchandisers over that period?

A. Norman Harvey was the last merchandiser who was there at the Pasadena branch, who called on me. The

others, I could look at the list and probably refresh my memory on them.

The Court: Let us start backwards with that man. Go ahead and tell us about Harvey.

By Mr. Somerville:

Q. Yes, tell us what Mr. Harvey told you, if anything.
A. Well, that was the time I sold the business that I had the conversations with Harvey.
Q. And what did Mr. Harvey say?

The Court: Tell us the year, now.
Mr. DeMartini: When did you sell it? Pardon me.
The Court: Tell us the time.

By Mr. Somerville:

Q. Can you fix the date on that? When did that occur? Fix the approximate date, month and year, as nearly as you can.
A. About four or five years ago. Let's see.

The Court: Well, all right.

By Mr. Somerville:

Q. Are you still operating a Richfield service station at [fol. 1672] that address?
A. No.
Q. When did you leave that station? When did you terminate your lease?
A. Well——

Mr. Somerville: Will counsel stipulate that the lease was terminated November 1944?
Mr. Paradise: Yes, so stipulated.
The Court: All right. Does that refresh your recollection?
The Witness: November 1944?
The Court: Yes.

By Mr. Somerville:

Q. November 1944, does that help to refresh your memory?

A. Yes.

Q. With respect to the conversation with Mr. Harvey?

A. Yes.

Q. And what was that conversation, now, relating to the handling of competitive merchandise?

A. Well, he said that the company was not satisfied with my operation and that if I was not willing to co-operate that they would have to find somebody to take the station.

Q. And was that the reason for your leaving the station?

A. Yes.

The Court: Did he explain what he meant that you were not co-operating?

[fol. 1673] A. Well, possibly I assumed what the reason was.

The Court: What was he talking about? Had you had difficulties before about handling competitive products?

The Witness: I had difficulties with the merchandiser, your Honor, but the higher authority in Los Angeles of Richfield Oil Corporation would always straighten them out.

The Court: But this time you evidently could not, is that it?

The Witness: That is right.

The Court: All right.

By Mr. Somerville:

Q. And as a result you left the station?

A. They found a buyer and I sold it.

Q. And at that time did you still have an investment in the lighting equipment?

A. I did.

Q. And did you have an investment in stocks?

A. I did.

Q. And did you have any customer accounts at that time?

A. Oh, yes.

Q. That you had built up during the period of 25 years or so?

A. Yes, I did.

Q. Calling your attention to 1943, when you executed a new form of lease requiring or specifying termination by [fol. 1674] 24-hour notice, can you describe to the court the

circumstances surrounding the negotiation of that new lease? Was there any discussion concerning that?

A. Yes. I refused to sign it.

Q. You refused to sign it. What was your reason for refusing to sign?

Mr. Paradise: Objected to as immaterial.

The Court: What did you tell him? Did you give any reason?

The Witness: Yes.

The Court: What did you tell him?

The Witness: It had no provision for my being allowed to operate before, as an independent dealer.

By Mr. Somerville:

Q. You subsequently signed, however, didn't you?

A. I did.

Q. Did you have any alternative?

The Court: Well, you are arguing, you are arguing.

Mr. Somerville: I am sorry. I concede that.

The Court: That is argument. He has told his stor.y You signed and you went on?

The Witness: That is right.

The Court: And then when you sold out, what money did you get out, just for what?

The Witness: For my merchandise and my equipment [fol. 1675] depreciated.

The Court: Your equipment. And the fixtures, of course, like the lighting, etc., you could not pull those out?

The Witness: That is right.

The Court: Because they were fixtures. Did you have any non-competitive products on your shelves when you made the sale?

The Witness: Oh, yes.

The Court: What did you do with those?

The Witness: Sold them to the incoming buyer.

The Court: He bought them from you?

The Witness: Correct.

The Court: That is all right, he is a nice man. Did he buy some of your equipment, too?

The Witness: Oh, yes.

The Court: If you keep repeating this story, I could almost repeat the story myself.

[fol. 1676] Mr. Somerville: The government asks that the following documents be marked Government's next in order, consisting of a document bearing the caption, "Richfield Oil Corporation, Marketing Department—Southern Division. Subject: Form 542, Revised 3-41 (24 Hour Cancellation Privilege)," and addressed, "To All Branch Managers, Salaried Agents, Commission Agents, Territory Salesmen, and Merchandisers, Southern Division," and signed by "W. G. King, Jr."

The Court: All right.

Mr. Paradise: No objection.

Mr. Somerville: And, further, a document consisting of a letter from B. J. Shafer to Mr. F. F. Little, dated July 31, 1941.

Also, a letter——

The Court: What has that to do with the testimony of this witness?

Mr. Somerville: It concerns the 24-hour clause.

The Court: The main idea is that we want to finish with the examination of this witness. That you can bring in later. Let's finish with the witness first.

Mr. Dixon: Yes, your Honor. We will have these marked for identification, and then offer them into evidence at a later date.

The Court: Yes, just mark them for identification now.

[fol. 1677] The Clerk: They will be Government's Exhibits No. 10, for identification, with the subdivisions.

(The documents referred to were marked Government's Exhibits 10, 10-A, 10-B, 10-C, 10-D and 10-E, for identification.)

Mr. Somerville: Your witness.

Cross-examination.

By Mr. DeMartini:

Q. Did you see these before, Mr. Mills? Lease dated August 16, 1937, providing for a rent of $200 a month, plus one cent over 20,000 gallons, making it an even cent; is that correct?

A. Yes, that is right.

Q. And an amendment dated May 5, 1942, providing for $150 per month, with one cent over 20,000 gallons——

A. Yes.

Q. —which made it somewhat less than a cent, if you went over 15,000; is that correct?

A. That's right.

Q. And an amendment dated December 4, 1942 indicates the rent was $100 a month, wasn't it?

A. That's right.

Q. And a lease dated April 15, 1943 specifies a rent of $50 a month plus one-half cent over 10,000 gallons; is that correct?

A. In 1943?

[fol. 1678] Q. That is your signature (indicating)?

A. Yes.

Q. That is a half a cent a gallon, isn't it?

A. Yes.

Q. And an amendment dated April 1, 1944, specifies a rent of $100 per month, with one cent over 10,000 gallons?

A. Yes.

Q. That is one cent a gallon, isn't it, with a minimum of $100?

A. Yes.

Q. What was the reason for those various rental amendments?

A. The war years brought different conditions.

Q. And your rent was reduced because of unfavorable conditions; is that correct?

A. That's right.

Q. Unfavorable business conditions?

A. That's right.

The Court: Limited supplies, too, to sell?

The Witness: Yes?

The Court: Isn't that true?

The Witness: And the cost to do business.

By Mr. DeMartini:

Q. You are a very good service station operator, aren't you, Mr. Mills?

A. I couldn't answer that.

[fol. 1679] Q. You are one of the best that Richfield ever had; isn't that true?

A. I wouldn't answer that.

The Court: Are you still in the business for some other concern?

The Witness: I am.

The Court: For another concern. I see.

Mr. DeMartini: No further questions.

Redirect examination.

By Mr. Somerville:

Q. Just one further question. Do you happen to know of your own knowledgw what the underlying rental was that Richfield paid to the property owner on that property at the beginning?

A. I hadn't seen the lease, but I believe it was based on my original sublease, identical terms.

Q. Your rental and the rental that Richfield paid was the same?

A. Yes.

Mr. Somerville: That is all. Thank you.

The Court: You may step down.

(Witness excused.)

Mr. Somerville: The government offers into evidence Government's Exhibit No. 10, for identification.

[fols. 1680-1683] Mr. Paradise: May we withhold that offer until we have had a chance to examine it? I have seen only the first instrument.

The Court: Yes, you may look it over. There are a lot of instruments there, and you may want to object to them.

Mr. Dixon: Now, as I understand it, your Honor, we are not going to be in court on Monday.

The Court: That is right.

Mr. Dixon: I mean in this case.

The Court: I will be in court, but you won't have to be. You ought to see the pile of files that Mr. Childress has put on my desk to look over between now and Monday.

Mr. Dixon: This is off the record, your Honor.

(Discussion between court and counsel off the record.)

The Court: Now, let's get back to our case here. This case will be continued until Tuesday morning at 10:00 o'clock, and we will adjourn until Monday.

(Whereupon at 5:25 o'clock p. m., Friday, May 11, 1951, an adjournment was taken until 10:00 o'clock a. m., Tuesday, May 15, 1951.)

[fol.1684] The Court: Cause on trial.

Mr. Somerville: Your Honor please, the government offers in evidence Exhibit No. 10 through 10-E.

Mr. DeMartini: No objection.

The Court: They may be received.

The Clerk: Government's 10, 10-A through 10-E in evidence.

(The documents, heretofore marked Plaintiff's Exhibits 10, and 10-A to 10-E, inclusive, were received in evidence.)

Mr. Somerville: The government calls as its first witness this morning Harry Ellis.

Harry R. Ellis, called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination:

Mr. Somerville: Your Honor please, we are calling Mr. Ellis slightly out of order. He is a supplier witness, but he has some commitments out of town, and we are calling him at this time.

The Court: All right.

[fol. 1685] The Clerk: What is your name, please?

The Witness: Harry R. Ellis.

The Clerk: E-l-l-i-s?

The Witness: Right.

By Mr. Somerville:

Q. Mr. Ellis, where do you reside?

A. At 1776 Sharon Place, in San Marino.

Q. What is your occupation or employment?

A. Salesman.
Q. Salesman for whom?
A. The Pennzoil Company.
Q. The Pennzoil Company?
A. Right.
Q. What products does the Pennzoil Company deal in?
A. Motor oils and lubricants.

Mr. Paradise: Will you speak a little louder, please, Mr. Ellis?

The Witness: Motor oil and lubricants.

By Mr. Somerville:

Q. What class of trade do you sell?
A. The retail trade, that is, the retail dealer.
Q. Including service stations?
A. Including service stations, garages, and motor car dealers.
Q. Do you make calls on Richfield service stations, that [fol. 1686] is, service stations handling Richfield brands of petroleum products?
A. Many times.
Q. What is your sales territory, Mr. Ellis?
A. The geographical boundaries?
Q. Yes.
A. At the present time—it has been changed over the past years, but at present the geographical boundary is from the Los Angeles City Limits, approximately Fremont Street in Alhambra, or just this side of that, through to Ontario, and from Valley Boulevard to and including Azusa, and such towns through there.
Q. Are you familiar, Mr. Ellis, with the brands of lubricating oils and greases dispensed at Richfield service stations, that is the Richfield brands of lubricants and greases?
A. Well, more or less, yes.
Q. Are the products that you sell comparable or competitive with those brands of lubricating oils and greases?
A. That is correct.
Q. Can you tell us where the Pennzoil Company receives its shipments of lubricating oils and greases?
A. Mostly shipped out of Oil City.

Q. Out of Oil City?

A. Out of Oil City, Pennsylvania.

[fol. 1687] Q. Yes, sir. And distributed from Los Angeles to the trade?

A. And various other branches, yes.

Q. Calling your attention, Mr. Ellis, to a service station operated by Harlan G. Mills at 4 East Huntington drive, Alhambra, California, are you familiar with that particular outlet?

A. I am.

[fol. 1688] Mr. Somerville: May the record show that this is the same service station and the same dealer concerning whom testimony was taken last Friday?

Q. With respect to this particular outlet, Mr. Ellis, have you ever made any attempts to sell your products to this station?

A. Yes, I have.

Q. During what period or periods?

A. For a good many years—principally—do you want me to tell you just how it led up to 1944 or 1945? Is that what you mean?

Q. Yes.

A. Well, the background of it was, that station was originally Duncan & Mills and then that partnership was severed and Mr. Mills took over, Harlan Mills, in other words, and the station, to the best of my knowledge, was a lease and sublease station or something like that.

Mr. Paradise: I move that that answer be stricken, if the court please, as not responsive to the question. No foundation was laid.

The Court: I think that last statement should be stricken. The first part of the answer will remain.

Mr. Somerville: We are are not interested in the arrangements, Mr. Ellis.

The Witness: Oh, I see.

[fol. 1689] Mr. Paradise: May it be stipulated, Mr. Somerville, that the Harlan Mills station was an L-O station?

Mr. Somerville: I think that was the testimony of Mr. Mills.

The Court: All right.

By Mr. Somerville:

Q. With respect to this outlet did you attempt to sell any of your products during 1944 or 1945?

A. I did.

Q. What was the result?

A. Well, I was able to sell Pennzoil to this outlet under restrictions.

Q. Would you tell us, Mr. Ellis, what restrictions, that is, relating it to any particular conversations? Did you have any conversations with Mr. Mills concerning that?

A. Mr. Mills always informed me that he had to keep the products hid under the counter.

Q. How often did you call——

Mr. DeMartini: I will object to this as no proper foundation laid, your Honor, as to time and place of the conversation.

The Court: We ought to know what we are talking about, counsel, so we know what it means.

Mr. Somerville: I am developing that, counsel.

Q. Let us relate it to specific times. How often did you [fol. 1690] call on Mr. Mills?

A. Well, I called on Harlan Mills every two weeks.

Q. When did any conversations occur and, if several conversations occurred, let us know the approximate dates of the conversations concerning the handling of this oil.

A. The approximate dates?

Q. Yes. When did you have any conversations with Mr. Mills?

A. Well, I had conversations with Mr. Mills every two weeks during that period of two years, we will say.

Q. Were the conversations of the same general tenor?

A. Well, my conversation would probably run along like—would run along like this: Naturally, I wanted to sell more of my merchandise, as much of my merchandise as I could. In my conversation with Mr. Mills, if his sales were not too good, why, I would ask him why, and he says: "Well, you can't sell much of a product that you have to hide." That is exactly what Harlan has told me many times.

Q. Did you observe whether Mr. Mills actually did hide it?

A. I did, because it seemed my duty. Lots of times I

was asked by Mr. Mills to go into the station and open up the hiding place and count the merchandise in there so I could inform him just how much stock he had.

Q. Did he explain to you why he hid this oil?

[fol. 1691] A. He did.

Q. What was the reason?

A. His reason was he didn't want the Richfield supervisor to find the oil in his place of business.

The Court: Where was this hiding place you were speaking of?

The Witness: Down under the counter, Judge. He had a display counter in front which was used for display purposes. He had his Richfield products on it, and down under the counter were doors that opened like this, and they were in back under there.

The Court: Like doors in a kitchen?

The Witness: In a cabinet.

The Court: In a cabinet?

The Witness: On that order, yes.

By Mr. Somerville:

Q. Calling your attention now, Mr. Ellis, to a service station at 625 West Las Tunas operated by David W. Colmery in Arcadia, California, are you familiar with this station?

A. Yes, I am.

Q. Have you ever called on Mr. Colmery?

A. Yes, I have.

Q. Have you made any sales of your products to him?

Mr. Paradise: I object to any questions insofar as the Colmery station is concern, if your Honor please, for lack [fol. 1692] of proper foundation. We had established, I thought, last Friday that when stations were involved which had not previously been testified to by dealers, that indication would be made as to the nature of the station, whether it was an L-O station or not.

The Court: Yes.

Mr. Somerville: May we ask, counsel, if you stipulate that this station was a station operated under one of the three forms of agreements involved in this case?

Mr. Paradise: Yes, one of the three forms. The particular form, however, is the one that we want designated.

The Court: Because he is putting this question out of order, I will allow him to bring in this testimony at the present time, with the understanding that he supply us later as to the form of agreement. As I said last week, I think you are entitled to put in your evidence upon your theory that the three types of stations do not involve in essence any difference insofar as the character of the relationship. At the same time, because counsel have shown that they do base an argument upon the alleged distinction that they maintain exists between the stations, I think as a matter of courtesy and also for the purpose of laying foundation for an argument and a possible ruling upon each of them separately as the testimony is offered, we should be informed about the character of the relationship existing at [fol. 1693] the station as to which that is directed.

That is a long speech to make over a small matter, but I thought we should re-orient ourselves this week so we get started that way.

Yes, sir.

Mr. Paradise: I was going to suggest this, young Honor, that the objection goes to a point more than merely clarity, for this reason: That insofar as testimony of competitors is concerned which relates to either the 3-C or the 337 contracts, as distinguished from the L-O contracts—and that is the reason why I wanted the foundation laid—there is an entirely different objection which has not been presented to the court as yet. That concerns the materiality and relevance of such testimony and the application of the hearsay rule which we would like to present separately. That has not been developed until a foundation has been laid showing that the competitor is testifying to a station other than an L-O station.

The Court: I am not limiting your objections. I merely stated why I believed that a policy should be followed, and if this witness' testimony is not tied up later on to show the exact nature of the relationship and the station about which he is speaking, then the motion to strike may be presented at the proper time.

[fol. 1694] Mr. Somerville: If the court please, in the an-

swer to the defendant's interrogatories, we have submitted the name of supplier witnesses, together with data concerning the attempts that were made to sell specific stations.

The Court: All right.

Mr. Somerville: Counsel have been informed of the particular attempts to which Mr. Ellis will testify.

The Court: That is true, but that does not take care of the main situation that there is no testimony at the present time as to the character of the relationship, about which this testimony is to be given. That is what we are talking about.

Mr. Somerville: I realize that.

The Court: He was not claiming surprise, or anything of the kind.

Mr. Somerville: I realize that. I thought counsel might stipulate here as to the form of the agreement in the particular attempt that is described. Could you stipulate as to the form of agreement to which David W. Colmery is a party?

Mr. Paradise: I don't have that file in court, Mr. Somerville. We were not asked to bring that file into court this morning.

Mr. Somerville: You have none of the supporting documents on the particular attempts?

[fol. 1695] Mr. Paradise: No, just the particular ones that you indicated yesterday, and Mr. Ellis' name and Mr. Colmery's name does not appear in the answer to the interrogatories.

Mr. Somerville: I would like to call your attention, Mr. Paradise, to the fact that we had a supplemental list of attempts concerning Mr. Ellis or supplemental answers to interrogatories.

Mr. Paradise: I think that is true, but we don't have the Colmery file here.

Mr. Somerville: In view of that situation, we will present the supporting documents at a later time.

The Court: All right. Let's go on, gentlemen.

By Mr. Somerville:

Q. Mr. Ellis, you testified that you are familiar with the station operated by David W. Colmery?

A. That's right.

Q. At any time have you attempted to make sales to this outlet?

A. Yes.

Q. When?

A. Well, at numerous times, particularly in the last year.

Q. Have you been successful in selling him?

A. No, I haven't.

Q. Have you had any conversations with Mr. Colmery [fol. 1696] regarding the reasons for it?

A. Yes, I have.

Q. About when did those conversations occur?

A. Well, on my attempt to sell him oil, he would give those reasons why he couldn't buy.

Q. Can you fix some approximate time, sir?

A. Well, that would be pretty hard to do when you call on your territory every two weeks. It might have been any time during the time 52 weeks of the year. Every two weeks is when I would call on the man.

Q. Would his reasons be repeated from time to time?

A. Oh, yes, sir. He always repeats the reasons why he didn't buy. They all do.

Q. And what were the reasons that he gave you?

Mr. Paradise: That I object to as hearsay, if the court please.

Mr. Somerville: If the court please, this goes to the matter of the effect upon the market involved here. It is offered for that sole purpose.

Mr. Paradise: May I be heard on that?

The Court: Yes.

Mr. Paradise: I believe that any testimony of any competitor of any conversation with a dealer in a Richfield station which is not an L-O station is objectionable, first, on the ground of hearsay, and, second, on the ground of materiality.

I think that for the purpose of this discussion, if the [fol. 1697] court please, and this may form a pattern for a great many witnesses that will come before this court in the course of this trial, I would like to present this fairly fully.

And may it be stipulated that the Colmery station was not a Form 542 sublease?

Mr. Somerville: I think that is a 3-C station.

The Court: I think while this argument is going on, you might as well step down and sit in a more comfortable chair, Mr. Ellis. We will call you back.

The Witness: O. K.

Mr. Paradise: Counsel has mentioned that the Colmery station is a 3-C type of station. Now, the purpose—may I say parenthetically that I appreciate that this same problem was discussed and passed upon by your Honor in the Standard Oil Company case, but I think there is a most vital difference between this case and the Standard Oil Company case, where the same question was raised.

The court will recall that in that case the written contract between the Standard Oil Company and a dealer was before the court, before the competitor was permitted to testify as to conversations between the competitor and the service station dealer. That written contract had stated expressly on its face that the dealer agreed to purchase his entire requirements of petroleum products. The objection was made by the Standard Oil Company in that [fol. 1698] case, as I recall it, that testimony of that sort was hearsay and not binding upon the Standard Oil Company, no member of the Standard Oil Company being present, and various other reasons for the hearsay rule, and no opportunity to cross-examine.

The testimony was ultimately let in on the theory that the testimony was material to show the state of mind of the particular dealer, in showing the effect of the exclusive dealing contract.

Now, that situation differs most materially from the situation with which this court is presented here. In this case the court will examine the types of dealer contracts, written contracts, that are before the court and attached to the stipulation which is Defendant's Exhibit A, and you will notice there are two types of dealer contracts. Those pertaining to the so-called 337 stations are contracts that I believe the court examined while Mr. King was on the stand. Those are contracts that call for the sale by Richfield and the purchase by the dealer of a specified quantity

of material. It specifies a minimum and a maximum, and I believe the court will recall Mr. King testified that the dealer agreed to buy the minimum, and he has a right to buy the excess, up to the amount of the maximum.

As to the 3-C type of sales contracts, there are two different periods involved, two forms of written contracts covering the 3-C stations, and both sales contracts. Speak-
[fol. 1699] ing of the sales contracts attached to the stipulation between counsel, which is Defendant's Exhibit A, the sales contract that was used during the period from 1945 to 1948 covers the entire requirements of petroleum products. The court will also recall Mr. King's testimony that that form of contract was discontinued in 1948, I think in August he testified, and has never been used since, and that negotiations were undertaken to amend those contracts, and the form of contract that was substituted was a form of sales contract that provided for the sale of a quantity of gasoline in exactly the same form as the so-called 337 sales contract, that is to say, a specified quantity, setting forth a minimum and a maximum.

Now, where a particular service station is involved and is being testified to by a competitor witness, if it involves a 3-C sales contract, which was entered into on the old form, the entire requirements form, prior to 1948, I think that testimony of that sort is comparable to the testimony which your Honor admitted in the Standard Oil Company case. As to either of the other two types of contracts, either the 337 contract, which has been on a stated quantity basis from 1937 until this date, as your Honor will see by the stipulation between the defendant and the government, or if the testimony relates to a station which is a so-called 3-C station, as to which the sales contract was written subse-
[fol. 1700] quent to August of 1948, as to either of those types of stations the court will see that the contract between Richfield and that particular service station dealer is not an entire requirements contract, it is not an exclusive dealing contract, but it is a contract for a specified quantity. Therefore, testimony of a particular competitor as to conversations with the dealer can have no bearing on the issues in this case with respect to its effect. The only purpose, we submit, of testimony that would be offered of that sort, of a statement by a competitor witness,—let's assume it would

be a 337 dealer or a 3-C dealer after 1948, the only purpose of that would be an effort to show an agreement by that particular dealer that he would not buy and could not buy particular products, whether that be true or not true. But the court will perceive that in a situation where you have a written contract that shows the relationship with the company, the only purpose of testimony of that sort would be an effort to establish the terms of a different contract by hearsay testimony.

The Court: The hearsay rule would not apply to a proceeding like this, where the object of the government is to establish as to each of these connections that notwithstanding your paper work, in reality they were all-requirements contracts, and were so understood and interpreted by the parties to them.

[fol. 1701] Mr. Paradise: But if the court please,——

The Court: That is the theory of the government. To follow your suggestion, the law suit would be over, because I would have to agree with you that you have established by the paper work three different types of contracts, and you would call on me to determine what they are, and I would have to determine that the L-O contracts are the only ones in controversy. Then I would have to tell the government that I had enough on that, and you would put your proof in on those, and the case would be over by the end of the week.

Mr. Paradise: No, I don't believe so, your Honor.

The Court: I cannot see that at the present time, and until the court has actually determined, as a matter of law, that there is a distinction between the three types of contracts, this testimony is just as admissible as to other than L-O stations, and you admit it is admissible as to L-O stations, upon the theory, which I stated a moment ago, that it is admissible in a case of this character because we are on the equity side of the court, and you know that the rules of evidence do not apply with great particularity to the equity court. In England they did not even apply the rules of evidence. They were introduced in England in common law courts when the jury system was introduced, in order to help the layman understand evidence, and so the ordinary rules of evidence were applied.

[fol. 1702] One day when I was sitting in my first three-

judge court with Judge Wilbur, who, as you know, had a long career as a trial judge, which began as a Superior Court judge of this county, and before whom I tried my first important case, Snively v. Los Angeles Record, when the evidence came before us in the three-judge court, he said, "Oh, let it go in. We are supposed to disregard it if it is immaterial."

I do not adopt that loose attitude toward the subject. I am merely relating the opinion of a judge of the Court of Appeals, whose opinion was binding to the exclusion of all the others. That is what he thought of allowing in evidence in an equity case. As I say, I do not go to that extent, but I still say that if the government is going to be permitted to go behind your paper work and to show that in reality by means of a contract by which you agreed to furnish so much gasoline, and then a supplemental contract by which you agreed to repaint his station, and he was to repay you for the cost of the painting if he took off your sign, and you retained the privilege under the painting contract of not allowing him to put up any other sign, and in other ways, so that in reality you were supplying all the needs of that man, and the testimony is that the man who was in charge of the station so understood it, I say that is admissible, because when it comes to the effect on commerce, the Supreme Court, since the very beginning of the cases [fol. 1703] involving these various methods which have been devised to conform to the law or to get around those provisions—I use the words "get around" not in an obnoxious sense—from the time of the Hardwood case, where they claimed that all they did was to sit down and exchange views, down to the Salt case and the Masonite case, on which you rely so much, have held it is the practices which followed rather than the agreement which gave the clue to what the agreements were. In fact, in many of these cases there wasn't any paper work. They had a minimum of paper work. In the Fashions case, and in all the cases, that method was the only method which enabled the court to get at the situation as it actually existed.

It may well be that at the conclusion of the government's case, I may be satisfied that they have not been able to show the existence of minimum requirements as to these contracts other than L-O stations. But until that is demon-

strated, I will have to proceed on the assumption that there will be evidence in the record tending in that direction, that there is no distinction as to determining the effect on the mind of the operator.

In the National Labor Relations Act cases the courts, in order to determine whether or not there was an unfair practice, have repeatedly allowed evidence to go in as to whether particular persons understood what they were [fol. 1704] required to do, whether it related to calling them into a shop conference, on the boss, as it were, giving them free time to hear a lecture, or the like. They have taken those things, and gone behind the situation, and have not only shown what was said, but the effect on the persons involved, whether in reality it was a threat to either "do this or else."

So you have stated your position fully, and I have stated it fully, and the objection will be overruled.

Come back, Mr. Ellis.

Mr. Somerville: In the light of your Honor's ruling, and in compliance with your instructions to identify the type of outlet, we would like to bring in the documents concerning the attempts, and hereafter we will furnish Mr. Paradise in advance a list of these documents that we desire in connection with the particular witness' testimony.

The Court: I think that is the more orderly procedure.

Mr. Paradise: We will be glad to furnish them, Mr. Somerville.

The Court: All right.

Mr. Somerville: I might say, your Honor, also that in line with your Honor's comments, we are limiting the number of leased out dealers who would testify from here on in, and they will be primarily illustrative of this supplier [fol. 1705] attempt. So in every instance we will not have the operator of a leased out station in court here concerning whom an attempt was made.

[fol. 1706] The Court: I do not think it is necessary. We just went through a criminal case and, you know, there are some lawyers of standing who believe that if the Government, for instance, does not produce all the witnesses, we have got to consider that. And that happened to a lawyer who could not claim ignorance, because he was a former acting solicitor of the United States of America. I said

the Government can limit the number of witnesses they are going to bring in and you can draw an inference, even talk about it. It is an erroneous belief that any litigant must produce all the testimony. As a matter of fact I have never, even in the state court, given the instruction that many lawyers want, that if there are witnesses available and you do not produce them, the presumption is they would not tell the truth. The only thing occurs where you actually show that some witnesses were available and it was your duty to put them on and you did not put them on because they would contradict your story.

And ultimately, in a civil case especially, in any case the person who puts on a witness vouches for him, and if you subpoena a person, even subpoena a person under the assumption that he would testify according to certain ideas you have, and you discover that his ideas were not that, as a matter of fact you should keep him off the stand, because when you put him on you are bound by his testimony and you are confronted in that situation with impeaching your [fol. 1707] own witness, which is a very difficult process.

So I am quite certain counsel in this case, at the completion of your case, are not going to produce the list and say: "Look, he has a lot more witnesses and did not bring them on. Why didn't he bring them on?" So I am giving them warning now, if they have any such ideas, what my views are. For instance, as I myself suggested, this is a matter of curtailment, and if you have four or five witnesses who testify as to a pattern and your pattern is shown to exist in six of the states, you do not have to produce any more in order to make the case top-heavy, because ultimately one witness whose testimony the court believes is sufficient foundation for a finding of fact which the court must make.

So that you are not only right legally in limiting the number of your witnesses but you are also correct tactically and in accordance with the policy I like to be followed in this case.

As I said—maybe I did—as I say, I have talked anti-trust so much, but in this meeting between four of us judges—Judge Prettyman, Chairman of the Commission, and Judge Augustus Hand of the Court of Appeals of the Second Circuit, and Judge Libell of the Southern District of New York and myself, and 12 members of the Committee on Antitrust

Procedure of the New York Bar, headed by Mr. Breck McAllister who used to be a professor of law at Berkeley many [fol. 1708] years ago—in fact, born in this state—when I told them that some of the difficulties they seemed to be having in the east did not even arise—somebody complained about some of the things Mr. Dixon is supposed to have done in the Lead case—I said he did not try that kind of stunt in my court. So when I told them about the methods we adopt of limiting the issues and curtailing cumulative testimony, one man said to me, "Why, you have adopted the English system." I said, "The English, heck. The only time I was in England was when my ship from France touched Portsmouth." And I said, "I don't know anything about English procedure except from reading." I said, "This is a method we have devised in California—a method which we have followed in the state courts, too, because we are heirs to your system, and that is to the reform system of procedure which you adopted in New York first and which we have adopted afterward." And I said, "You have devised these methods of regulating the conduct, not to allow lawyers to go on and on until they feel the record is saturated and they have enough to convince you." I said, "I tell a litigant in a certain case when I think the point of saturation has been reached."

So I am making these general observations not as a compliment to myself, because the method I follow is the method that has been followed by others not only here but up and down the coast in the trial not only of these cases [fol. 1709] but of other cases. Even in the criminal case I just finished I called in the attorney and told the Government. I said, "Look, you have got 41 counts. I have got an important piece of civil litigation here waiting for me. Why do you want to offer evidence as to 41 counts. There is not any jury here. You cannot impress me by bulk." And I said, "This is not a mail fraud case where the postal agents, you know, always bring in a cabinet full and you hurt their feelings if they go out with anything in the cabinet." There used to be one in particular, Inspector Smith, you know, and he used to believe that if he wheeled in a cabinet and if there was one piece left when he left out of here, that I did him wrong. So I said to him. "Look, why don't you just choose your best and offer evidence, just as

you do in a patent suit." I tell the lawyers, "Look, why don't you give me five of your best references out of the 300 in the prior art and let's see how strongly they stack up."

So the Government chose 15 and they offered evidence as to 15. By the time the Government's case was ended I threw out seven, which left eight, and by the time the whole case was in I threw out two more, and ultimately I found the man in front of me guilty. I tried it without the jury and found him guilty of six counts.

This process of elimination is a legitimate way of trying all lawsuits, and it is the duty of the judge. I think the reason so many complaints arise is because judges do not [fol. 1710] feel that it is their duty to control proceedings. They are afraid some lawyers' feelings will be hurt. Well, I have hurt lawyers' feelings for 24 years and they are still my best friends. If I wanted any help or even a recommendation, I am sure that some of the men who contested most strenuously would give it. As a matter of fact, I probably would say if I wanted a letter of recommendation, none would give me a more glowing one that John Wall whom we could not even make smile in the Richfield case.

So I believe your policy is a correct policy and I approve it. Let us go.

By Mr. Somerville:

Q. It is a long time, but we were on this Colmery, Mr. Ellis, and I believe you testified that you did attempt to sell him and you had certain conversations concerning your inability to sell.

A. That is correct.

Q. First of all, what was the period of time that you were making these attempts?

A. Well, it has been practically ever since the man had the station.

Q. Over a period of years?

A. Yes, and even up to the present time.

Q. And when did any conversations occur concerning his inability to handle or concerning the reason why he could not handle your oil?

[fol. 1711] A. Do you want me to tell you the basic facts of the conversations?

The Court: That is right. But what he wants more is to give us a starting point, an idea of it. You do not have to say it was on Wednesday, such and such a date, but give us approximately one of the early ones and then one of the late ones.

Mr. Somerville: Yes, for example, when you first called on the man and experienced any reaction, when would that be?

A. Well, I think—it is pretty hard to state a date or month of the year, because when we call on a place so many times during the year it is pretty hard to put your finger on that, because you make regular calls all the time and you go in and visit with a man, and the ultimate result is the same basic facts each time that you talk with him.

Q. Then, let us take one of your last visits.

A. Well, the last interview I had with this particular man, he wanted to know if——

The Court: When was it? Tell us when it was.

By Mr. Somerville:

Q. When was it, this year?

A. Yes, this year, this year. It was within the last——

The Court: That is all right.

The Witness: Since the first of the year.

The Court: This is an equity case and anything that exists up to the time of the decree may be gone into without [fol. 1712] supplemental proceedings. Go ahead.

By Mr. Somerville:

Q. On the first of the year, when you called on Mr. Colmery, what was the reason that he gave for not buying?

A. Well, I made this particular call at his request through one of my other accounts, and when I got there he wanted to know if he could get a case of Pennzoil for a particular customer. And then he went on with his conversation and he said, "I can't stock this product, you know, because the Richfield Oil Company will not permit it, but I would like to get this case of oil." And I suggested, "Well, I suggest then that you get this case of oil from one of your other dealers that does carry Pennzoil." Because, if I sold him,

he would have to make out a California state sales tax number, etc., and there would be a definite invoice to him, and I didn't want to get the man in trouble because he is a very nice fellow.

The Court: What did he say to that suggestion?

The Witness: He said he would do that, he would pick up the case of oil at some other account.

The Court: All right.

By Mr. Somerville:

Q. Calling your attention now to the service station operated by——

The Court: Wait a minute. Well, I will leave that out.

By Mr. Somerville:

Q. One more question concerning Mr. Colmery. Have [fol. 1713] you ever made any regular sales of Pennzoil to Mr. Colmery?

A. No, I haven't. I still haven't given you the basis of the conversation that I had with him.

Q. Go ahead.

The Court: I started to ask you that. Had you had any conversation at other times with him along the same lines?

The Witness: I have.

The Court: Can you give us the dates of those, approximately?

The Witness: Well, that would be at various times during the year, Judge.

The Court: During what year?

The Witness: Well, this year, last year.

The Court: Now, you have told us about the beginning of this year. Let us go to 1949. Give us the substance of any conversation that you had with him at that time. I mean 1950, not '49.

The Witness: Yes. Well, the basic facts that he gave me for his reason for not buying Pennzoil was the fact that—I brought up the point in my sales talk, because naturally I am trying to sell all the products I can—that the Richfield Oil Company could not prohibit him from buying

Pennzoil, because it had been already established by a criminal court case that that could not be done legally. And he [fol. 1714] said, "Well," he says, "I know that." And he said, "But," he says, "I have been told in various ways that if I did handle an outside product that there would be other means and other excuses to get rid of me."

By Mr. Somerville:

Q. Calling your attention to a service station operated by Lawrence Beischell at 132 East Foothill Boulevard, Monrovia, California, are you familiar with that station?

A. Yes, I am.

Q. Does that station dispense Richfield gasoline?

A. That is right.

Q. Have you called on that station?

A. Well, not for some time, Mr. Somerville. That particular station was taken out of my territory, that is, Monrovia was taken out of my territory here sometime ago and the evidence that I would have to give on that station would be prior to that time.

Q. Okay. When, sir, did you make calls on this station?

A. Prior to two years ago.

Q. Did you ever sell any of your products to Mr. Beischell?

A. No.

Mr. Paradise: May it be stipulated that Beischell was an L-O station?

Mr. Somerville: Yes, it may.

[fol. 1715] The Court: All right.

By Mr. Somerville:

Q. Calling your attention to the physical properties there, what type of station? Can you tell us about the property?

A. Yes. It faces on Football Boulevard and it has back shops behind it.

Q. Garage, you mean?

A. A garage, that is right.

Q. And did Mr. Beischell also operate the garage?

A. No. He had an arrangement with a man by the name of Bud Miller who operated the garage, part of it at that time.

Mr. DeMartini: I move to strike that as a conclusion of the witness, your Honor.

The Witness: That is not a conclusion.

The Court: Read the answer. I think the first sentence was all right.

(Answer read by the reporter)

The Court: I think I will leave everything after the answer "no" to go out, because I can't tell whether he is telling us what this man told him or whether he found that out in other ways, and we ought to know.

By Mr. Somerville:

Q. Do you know whether Mr. Miller was——

A. He rented the place from Mr. Beischell.

Q. Did he tell you that?

[fol. 1716] A. Yes.

Q. At that time?

A. That is right.

Q. Did you sell any Pennzoil to Mr. Miller?

A. Yes, I did at one time.

Q. But you did sell no Pennzoil to Mr. Beischell?

A. That is correct.

Q. Did Mr. Beischell tell you why he did not buy?

A. Yes, he did.

Q. What was his reason?

A. He was not permitted to buy on account of his contract with the Richfield Oil Company.

Q. Did you continue to sell Mr. Miller?

A. For a time.

Q. Was there any circumstance that arose concerning your sales to Mr. Miller affecting your sales?

A. Yes, there was.

Q. What was that and when did it occur?

A. A few years ago. Well, Mr. Miller told that the Richfield Oil Company supervisor brought pressure to bear on Mr. Beischell and himself to discontinue the sale of Pennzoil, and he ultimately did just that.

Q. Calling your attention now to a service station operated by Clarence Fisher, 416 West Las Tunas, San Gabriel, California, have you ever called on this station?

[fol. 1717] A. Yes, I have, last year.

Q. Has Mr. Fisher purchased any Pennzoil?
A. No, he has not.
Q. Is that a station dispensing Richfield gasoline?
A. That is correct.

Mr. DeMartini: May it be stipulated that that is an L-O station?
Mr. Somerville: Yes, it may.
The Court: All right.

By Mr. Somerville:

Q. Have you had any conversations with Fisher concerning his reason for not purchasing Pennzoil?
A. Well, he told me in no uncertain terms that he was not allowed to handle any outside product.
Q. Calling your attention to a service station operated by Warren Lester at 416 West Las Tunas in San Gabriel, have you called on that station?
A. That is one and the same station. Mr. Fisher is the successor to Mr. Lester.
Q. Was it dispensing Richfield gasoline?
A. That is right.
Q. Prior to that time?
A. That is right.
Q. Did you sell any of your products to Mr. Lester?
A. No, I did not.
Q. And did you have any conversation with Mr. Lester [fol. 1718] concerning his reason for not handling it?
A. Yes, I did.
Q. And when did that occur?
A. That occurred just about two weeks before Mr. Fisher took over.
Q. And what was the nature of that conversation? What reasons did he assign?
A. He told me that it would be foolish for him to attempt to put in Pennzoil because he had put in Quaker State and the Richfield supervisor had asked him to get it out of the station.
Q. Calling your attention now to a service station operated by Charles Waugh, 645 East Main Street, Alhambra, California, have you ever called on that station?
A. What is that address?

Q. 645 East Main Street in Alhambra.
A. Oh, yes.
Q. Does that station dispense Richfield products?
A. Yes, it does.
Q. Were you able to make any sales to Mr. Waugh?
A. Not at all.
Q. Did you have any conversations concerning the reason for his not handling Pennzoil?
A. Yes, I did.
Q. And when did those conversations occur?
[fol. 1719] A. Well, on several occasions during particularly this last year, on my regular calls.

Mr. Paradise: Mr. Somerville, are all these stations that you have mentioned, with the exception of the Colmery station, L-O stations? I think, in response to the court's suggestion, that you should indicate the type of station, because this afternoon we will have all our contracts here.

The Court: All right.

Mr. Somerville: I am not quite sure of that station.

The Court: I think, gentlemen, we ought to confine ourselves to the stations which deviate from L-O, because we know the pattern as to L-O, and if you gentlemen agree that the station is an L-O station, what is the use of having other evidence in the record and encumbering the record by contracts relating to them?

Mr. Somerville: We have, your Honor, limited our number of L-O incidents.

The Court: I know that. The only point is, upon the stipulation that he has made that that is an L-O station, then that should take the place of introducing the contract as to that station. The evidence relating to the conversation is in.

Mr. Somerville: Yes.

The Court: And if you have a stipulation that this is an L-O station, there is no need to bring the contract in which would show that it was.

[fol. 1720] Mr. Somerville: Oh, no. We would not require that.

The Court: I misunderstood Mr. Paradise.

Mr. Somerville: I think I am responsible for that.

The Court: Mr. Paradise's statement. I thought that

he thought that, as to these, you were going to produce the contracts. What is the use of it?

Mr. Paradise: I did not intend that, your Honor. Counsel said that this afternoon we should start bringing in the contracts that he asks for, which I will do.

The Court: That is all right. But, I say, he need not ask for those under L-O stations.

Mr. Somerville: Yes.

The Court: All right.

Q. By Mr. Somerville: Continuing on, then, and calling your attention, Mr. Ellis, to a service station operated by a man, William Hall, at 563 East A Street, Ontario, California, have you called on that station?

A. Yes, I have.

Mr. Somerville: May it be stipulated that that is an L-O?

Mr. Paradise: Yes, so stipulated.

By Mr. Somerville:

Q. And have you made attempts to sell Mr. Hall?

A. Well, that has been very recent, because Mr. Hall was in that station once before that with another man and the [fol. 1721] man was killed in an automobile wreck. So the station was closed for quite some time and then Mr. Hall and a new partner took over the station, and that is within the last—I am just guessing—this should be the last seven or eight months. It is approximately that.

Q. Did you sell any of your products to him?

A. No. I can give you some basic facts on why.

Q. Did you have some conversations with Mr. Hall concerning it?

A. Yes.

Q. During just recently this year?

A. That is right.

Q. And what were those conversations?

A. Well, on one particular call that was the last one that I made on him—I haven't made any calls on him since, because I found it was useless—and I called this particular time at his request. He asked the Citrus Motor Co. in Ontario to get him some Pennzoil on their invoice so that he could have it at the station, so he would not have an in-

voice to show in his station for buying that Pennzoil, an outside product.

Mr. Paradise: I move that that be stricken as improper.
The Court: Just a minute.

By Mr. Somerville:

Q. Is this part of the conversation?

The Court: You are telling us what he told you?
[fol. 1722] The Witness: I am telling you what the dealer told me.
The Court: Yes. All right.
The Witness: Yes.
The Court: Overruled.
The Witness: And so that was his reason for getting the Citrus Motors to pick up this oil for him. So I felt I had to find out why I couldn't sell him direct, that that other procedure was a little out of line, due to the sales tax difficulties and one thing and another for the State of California. So he told me. He said, "Mr. Ellis, when Richfield Oil Company gave me this lease they made me promise that if I got the lease that I wouldn't handle any outside products, and that if they did give me the lease and then after I got the lease I did handle some outside products, they would find excuses enough to get me out and cancel my lease." Now, that is exactly what he told me.

By Mr. Somerville:

Q. Calling your attention now to the service station operated by Gene Gay at 2082 Fourth Street, LaVerne, California, are you familiar with this station?
A. I am.
Q. And it dispenses Richfield gasoline?
A. That is correct.

Mr. Somerville: May it be stipulated that is an L-O unit?
[fol. 1723] Mr. DeMartini: So stipulated.

By Mr. Somerville:

Q. When did you call on that station?
A. I call on that station every two weeks.

Q. And do you still call on it?

A. Oh, yes.

Q. Are you selling any of your products?

A. I am.

Q. In regular quantities?

A. Regular case lots. Well, whatever he requires, yes.

Q. Do you observe whether Mr. Gay displays these products?

A. He does not.

Q. Where does he keep them?

A. Well, he told me he had to hide it, and he showed me where he kept it and it has been the procedure whenever I call on him to find out how his stock condition was, to go into this cabinet and count his stock and tell him what he needed, or he would do that, and that is the way I got my order. But he couldn't make any display of it and——

The Court: Where is this cabinet located?

The Witness: It is located in the station on the right-hand side of the station as you are standing in the station facing the street.

The Court: I see. All right.

[fol. 1724] By Mr. Somerville:

Q. Have you made any effort to encourage the display of this product?

A. Well, yes. I tried to get him to put out a Pennzoil curb sign, out in front, and he said, "I would not dare do that."

Q. Calling your attention now to a service station operated by Louis A. Towers at 303 East Foothill Street in Azusa, California, have you ever called at that station?

A. Yes, I did during last year. I haven't called there this year.

Mr. Somerville: May it be stipulated that it is an L-O station?

Mr. DeMartini: So stipulated.

By Mr. Somerville:

Q. Has he purchased or did he purchase any Pennzoil?

A. No. That is the reason why I am not calling on him this year.

Q. Did he tell you the reason?

A. The same as——

Q. First of all, were there any conversations concerning the reason?

A. Oh, many times.

Q. And when did one of these occur?

A. Well, practically any two-week period you want to take out of last year.

Q. What did Mr. Towers tell you?

[fol. 1725] A. That he could not stock Pennzoil because the supervisor of the Richfield Oil Company would not permit him to stock other products.

Q. Calling your attention now to a service station operated by Donald L. King at 155 West Foothill in Azusa, California, have you ever called on this station?

A. Yes, I have last year. I have not called on him this year.

Mr. Somerville: May it be stipulated that this station is an L-O?

Mr. DeMartini: So stipulated.

By Mr. Somerville:

Q. Were you able to sell any of your products at this station?

A. No.

Q. Did you have any conversation with him concerning the reason?

A. Yes, I did.

Q. When?

A. Most any time last year on those calls.

Q. What were the reasons you found?

A. Well, he was afraid to handle outside products because it was his understanding that if he did his rent would be raised, either that, or he would be cancelled out.

Q. Did he express any desire to handle your products?

A. Oh, yes. They all do.

[fol. 1726] Q. Calling your attention now to the service station operated by Stanley Patera, 137 East Valley Boule-

vard, Alhambra, California, have you ever called on his station?

A. Yes.

Mr. Somerville: May it be stipulated that Mr. Patera's station is an L-O station?

Mr. Paradise: So stipulated.

By Mr. Somerville:

Q. Were you able to sell anything to Mr. Patera?

A. No, I have not been.

Q. Did you have any conversations with him concerning his reasons?

A. Yes, I did.

Q. And when did they occur?

A. Well, any time during the past year, not this year. I haven't called on him this year, either, for obvious reasons.

Q. What were those reasons?

A. It was that the Richfield Oil Company objected to him handling outside products and he was afraid of the cancellation of his lease.

Q. Did he express any desire to handle your product?

A. Oh, yes. He said he would like to have it because he had many calls for it.

The Court: Your concern is one of the best known lubricating manufacturers in the country, isn't that true?

[fol. 1727] The Witness: That is right.

The Court: And then you have this "Pennzoil" which is an artificial trademark which is your own. It is catchy.

The Witness: That is right.

The Court: Because it combines Pennsylvania with oil.

The Witness: That is right.

The Court: And people can say "Pennzoil" very easily. It is like any other designation. It is easier to pronounce, naturally?

The Witness: That is right.

The Court: I think we had better have a short recess before we begin the cross-examination, so we won't break into it.

(Short recess.)

[fol. 1728] Mr. Somerville: I would like to request permission to ask Mr. Ellis a few more questions.

The Court: All right.

Direct examination (Continued).

By Mr. Somerville:

Q. Mr. Ellis, calling your attention to a service station operated by James E. Battles at 800 East Valley Boulevard, San Gabriel, have you ever called at that station?

A. Yes, I have.

Mr. Somerville: Is it stipulated that is an L-O unit?

Mr. Paradise: So stipulated.

By Mr. Somerville:

Q. When did you call on this station, Mr. Ellis?

A. My experience at this station was in January to April, 1950.

Q. Did you sell any lubricating oils or greases to that station?

A. I sold him some lubricating oil, yes.

Q. Did he continue to buy it through the whole period?

A. No, he didn't.

Q. When he discontinued buying it, did you again attempt to sell him? I mean, were you attempting to sell him after that time?

[fol. 1729] A. Well, it came as quite a surprise to me. I walked in to get a repeat order, and he told me that the Richfield supervisor had been in there and discovered where he hid it, along with Quaker State oil, and told him to get it out of there, and if he ever did that again, why, he would cancel him out.

Q. And then he didn't take any more?

A. Then he didn't take any more.

Mr. Somerville: That is all.

Cross-examination:

Mr. Paradise: I merely want to state for the purpose of the record, your Honor, that I understood my objection went to this entire line of testimony?

The Court: Oh, yes, that is right. That was very clear. That is why we took time to have you state fully your objection, and I stated my reasons in ruling, and there is no need to repeat it.

Mr. Paradise: Yes.

The Court: The objection is considered as applying to any testimony as to any conversation with any operator, as you call them, of stations other than L-O stations, on the ground that by reason of the nature of the relationship they are hearsay and not material.

Mr. Paradise: I did have an additional and completely [fol. 1730] independent ground for the objection, which I would like to present to the court at a convenient time, whenever it is convenient.

The Court: This man seems to be in a hurry to get out, so let's go ahead with him. Then when the next witness comes up, you can repeat your objection and add the additional ground.

Mr. Paradise: Thank you, your Honor.

By Mr. Paradise:

Q. Mr. Ellis, how long have you been employed by the Pennzoil Company?

A. Since February 18, 1929.

Q. 1929?

A. Right.

Q. In what capacity?

A. As a salesman.

Q. During that entire period?

A. Well, the first nine or ten months I was a truck driver.

Q. You are one of the top salesmen of the Pennzoil Company, I would presume?

A. Well, I wouldn't say that. I have been fairly successful.

Q. Have you operated in other territories than in the one you mentioned this morning?

A. Yes.

[fol. 1731] Q. For the Pennzoil Company?

A. Oh, yes. In 1940 and '41 I was in San Diego.

The Court: By the way, you were a witness in the Standard case, weren't you?

The Witness: That is right, Judge.

By Mr. Paradise:

Q. Well, from 1930 to 1940, what was your business?
A. I was a salesman for Pennzoil.
Q. For Pennzoil in that same territory?
A. Yes.
Q. And from 1940——

The Court: It must be a profitable position because they don't promote them out of it.
The Witness: No, I don't want to be promoted.
The Court: You don't want to be kicked upstairs?
The Witness: That's right. I don't want to have anything to do with brass.

By Mr. Paradise:

Q. Since 1940 you have been in what territories?
A. Well, in 1940 and 1941 I was in San Diego for the Pennzoil Company. Then I was brought back here, due to the war conditions, and so forth, and resumed my old territory down here, because I was only down there temporarily to straight out some difficulty they were having with a former manager down there.
[fol. 1732] Q. And since 1941 your territory has been in and around Los Angeles?
A. Well, I came back actually in March of 1942 to this territory.
Q. So your territory since 1942 has been the one that you have described?
A. That's right.
Q. What are your general duties as a salesman?
A. Well, my instructions from my supervisor are to call on all stations, garages, repair shops, and motor car dealers.
Q. That is, in your territory?
A. In my territory, regardless of what kind they are.
Q. Regardless of what?
A. Regardless of any condition, I am to call on all stations.

Q. Now, how do you determine who are prospects for your product?

A. Any station that doesn't carry Pennzoil.

The Court: That is a challenge to you?

The Witness: That is right.

By Mr. Paradise:

Q. Do you drive along the street, and any service station is a prospect?

A. You betcha, that's it.

Q. How many calls do you make a day?

[fol. 1733] A. Oh, that varies. Sometimes when I have got delayed, maybe by court trials, or something like that, I make 35 or 40 calls a day to make up.

Q. On different service stations in that area?

A. That's right.

Q. How often do you cover this territory?

A. Every two weeks. In some instance every week.

The Court: Of course, you first call on your regular customers in your territory?

The Witness: Well, I call on my regular customers, but if there is a prospect on that route, I get him too. I make calls,—I make regular calls.

The Court: I see. You make regular calls.

By Mr. Paradise:

Q. Now, the name of your company is precisely what?

A. The Pennzoil Company.

Q. Now, in what territories, in what area does the Pennzoil Company operate and sell its products?

A. Well, over the entire—they are a national and an international company.

Q. And you sell oil throughout the West Coast?

A. Oh, yes.

Q. How many salesmen does the Pennzoil Company have?

The Court: Where is the main office of the company?

The Witness: The main office for the eleven western [fol. 1734] states is at 942 South Hope in Los Angeles, and the mother company is in Pennsylvania.

By Mr. Paradise:

Q. When you speak of the Pennzoil Company, then you speak of a subsidiary company that operates on the West Coast?

A. That's right.

Q. How many salesmen does the West Coast company have on the Coast?

A. I am afraid, counsel, I can't tell you that, because I couldn't be accurate.

Q. Well, would you know that it is somewhere between 30 and 45?

A. It is all of that.

Q. Are there more?

A. Well, we operate over the 11 western states, and we have men going to all those districts, and we also operate, you know, pretty solidly in Oregon, Washington, and California.

The Court: What is your territory? I think you have told us, but I have forgotten.

The Witness: Well, it runs out through Alhambra and through Ontario. It is that streak between Valley Boulevard and the Foothills.

The Court: I see.

By Mr. Paradise:

Q. To how many accounts does the Pennzoil Company sell [fol. 1735] its products? By the way, let me ask a preliminary question. Is there more than one product sold, Mr. Ellis, or just one?

A. You mean from my company?

Q. Yes.

A. Well, oil and lubricants.

Q. All under the name "Pennzoil"?

A. Well, no, I wouldn't say that.

Q. Well, under what names?

A. Well, there is miscellaneous products that might carry different names than just "Pennzoil." Pennzoil refers to a motor oil, and the lubricants are called "Pennzoil" lubricants. Then there is motor purgers that are called

"New Zip." It says nothing about "Pennzoil." It is just a product of the Pennzoil Company.

Q. Are these the products you attempt to sell all service stations?

A. That's right.

Q. In what manner are they packaged? Are they all in cans?

A. No, they sell in bulk and in cans.

Q. Now, to how many accounts on the West Coast does the Pennzoil Company sell these products?

A. Counsel, I would suggest that you talk to the general sales manager of the company about that. I don't have [fol. 1736] that information.

Q. Thank you. I may not have an opportunity to do so, Mr. Ellis. Perhaps you can tell me.

A. Well, I just don't have that knowledge.

Q. Well, do you know within reasonable limits?

A. Well, it might be fifteen, sixteen, seventeen thousand dealers over the eleven western states.

Q. Is that your best knowledge?

A. That is just a guess.

Mr. Somerville: I object to that, counsel. He said he doesn't know.

By Mr. Paradise:

Q. You have attended sales meetings?

The Court: If counsel wants the information, as the witness states, it isn't very accurate, but whatever comfort he can derive from it is all right. Go ahead.

You have no control over the sources of information?

The Witness: No, none whatever, Judge.

The Court: You haven't seen it in the published literature?

The Witness: No, they don't publish anything of that nature.

The Court: Not to you?

The Witness: No.

The Court: No inter-company communications informing you?

[fol. 1737] The Witness: No. The only contact like that

that I would get would be just the number—probably the number of salesmen that works out of this Los Angeles branch that I associate with all the time at sales meetings.

The Court: How many would there be at that?

The Witness: Oh, about twenty, approximately twenty.

By Mr. Paradise:

Q. That is twenty salesmen out of the Los Angeles branch?

A. Out of this branch, but that does not include salesmen that work in, say, Bakersfield, Fresno, and San Francisco, and all up the Coast. That's just in Southern California.

[fol. 1738] Q. How many accounts do you personally have in your territory to whom you sold or to whom you are presently selling Pennzoil?

A. Well, approximately maybe 200. I have never actually counted them, but that is approximately what it is.

The Court: Your accounting is handled by the main office?

The Witness: That is right.

The Court: You are merely——

The Witness: The salesman.

The Court: Take an order?

The Witness: That is right.

The Court: And then you see that the order is filled?

The Witness: That is right.

The Court: And inquire on the next call whether he got what he ordered?

The Witness: That is right.

The Court: And then the billing, collection and all that are not handled by you?

The Witness: Well, some of the collections are, Judge, but most of it is handled by our credit department.

The Court: Do you collect sometimes when you make a sale?

The Witness: No, the driver does that. If it is a COD account the driver collects it. But many of my accounts pay me when I come in. They say they want to save that three cents and don't want to have to send it in.

[fol. 1739] The Court: So you collect and turn it over?

The Witness: Yes, sure.
The Court: All right,

By Mr. Paradise:

Q. Do you know, Mr. Ellis, whether the number of accounts that the Pennzoil Company has sold to has increased or decreased over the past five years?
A. It has very definitely——

Mr. Somerville: I object to that, counsel, as entirely irrelevant and immaterial.
The Court: Overruled. Go ahead.
Mr. Paradise: What was your answer, Mr. Ellis?
The Witness: Was I supposed to answer that?
Mr. Paradise: Yes, sir.
The Court: Yes. It has increased?

A. Well, I would say they have increased. How much I couldn't tell you.

By Mr. Paradise:

Q. You say it has very definitely increased?
A. Oh, sure.
Q. You are sure of that?
A. The company has progressed that way for a good many years.

The Court: And so have you?
The Witness: I would hate to think that my territory was decreasing, as far as that is concerned.
[fol. 1740] The Court: Or your individual ability as a salesman, wouldn't you?
The Witness: Yes.

By Mr. Paradise:

Q. Has that increase been reflected not only in the number of accounts but also in the volume of sales?
A. It has been reflected in the volume of sales, volume of dealers that are buying.
Q. I am afraid I did not quite understand that.
A. The increase is due to the volume that my present accounts are getting and the other accounts the other sales-

men have got, their volume has increased. Naturally, when you lose accounts you have got to make it up some place else in order to keep your quota up. You know, you don't stay long if you don't keep your quota up.

Q. You have a quota from the company?

A. Oh, absolutely. Don't they all?

Q. Then, do I understand your testimony to be that you have not only increased the number of accounts but also the volume of oil sold to each particular account or on the average?

A. That is right.

Q. Would you say that that has occurred over the last 10-year period?

A. Well, it has occurred over the last 20-year period, as far as I know.

[fol. 1741] The Pennzoil Company has prospered rather well in the last few years, has it not?

Mr. Somerville: I will object to that.

The Court: Just a moment, what was that?

(Question read by the reporter)

The Court: We wish them well. I presume the answer would be, "yes," but we do not want to go into that. The objection is sustained. I have no objection to the "increased," but whether they have financially prospered is not material in this lawsuit. I take judicial notice of the fact that the returns of the Department of Labor statistics show that in the last year the corporations in the country and the large business houses have had a very prosperous year. In the last quarter the sales were—I think I heard that on the radio—the accounts were, last quarter and the first quarter of this year, 29 per cent higher than the year before. So that, years ago, when you talked about a two billion income, we have, instead, three billion, and it is still going stronger, by the grace of God. So we are doing very well, despite all the crabbing that some people indulge in.

By Mr. Paradise:

Q. In your territory, Mr. Ellis, you have sold Pennzoil products to various stations which handle Richfield petroleum products, have you not?

A. That is true.

Q. You did not intend to give the court the impression [fol. 1742] that you were unable to sell your products to any stations handling Richfield petroleum products?

A. Well, I call on all Richfield accounts. As I testified before the recess, practically all of my sales was under that kind of basis of a hidden capacity, no display, no signs and what have you, if I did make a sale. And if I didn't it was for the obvious reasons that I have given already.

Q. You testified this morning concerning a conversation with Mr. Colmery at which you mentioned that it had been determined that he could not be legally prevented from selling anything but Richfield petroleum products, was that correct?

A. That is right.

Q. When did that conversation occur as nearly as you can fix it?

A. Well, it was last year, last fall. I would say approximately that time.

Q. You are talking about the fall of 1950?

A. Yes, the late fall.

Q. And where did this occur?

A. At his station there in Azusa.

Q. Who were present?

A. Just him, to my knowledge.

Q. Just the two of you?

A. Yes, that is right.

[fol. 1743] Q. As nearly as you can recall, please tell me what was said by you and by him.

A. Well, just in—just like I testified a while ago, that I was trying to sell him Pennzoil and obviously he couldn't buy it because——

Q. No, no, no. I want conversations, not what may have been your impression.

A. Well, his statement was just like I testified this morning, that he just couldn't handle it because Richfield Oil Company wouldn't permit him to handle it.

Q. That is what Mr. Colmery told you?

A. That is right.

Q. And what did you say?

A. I told him, legally, that that was not a fact. And he said, "Well, I don't know about that." And I said, "Well,

the Standard Oil trial that has just closed brought that point out, that it was a violation of the Clayton Act or restraint of trade law for any company to object to the sale of products of that nature."

Q. By the way, Mr. Ellis, you are not the salesman who has told service stations that since the decision in the Standard Oil Company it is compulsory on their part to buy Pennzoil products, are you?

A. Absolutely not.

Q. And that that was the effect of the decision?

[fol. 1744] The Court: When it comes to a lawyer, he gave you a pretty good summary. Don't cross examine him too closely. You do not want to quiz him too closely, you know.

By Mr. Paradise:

Q. What did Mr. Colmery respond to your statement that it had been determined that he could not be legally prevented from selling petroleum products other than Richfield? That was your testimony, was it not?

A. I didn't understand just what you meant there. Would you mind repeating it?

Q. When you told him about the effect of the Standard Oil decision, as you interpreted it, what did Mr. Colmery state?

A. He said, "Well, that may be true but they would cancel my lease on account of my handling Pennzoil, but they would find some other excuse, maybe the way I kept up my station and so forth as an excuse to get me out of here." That is what he told me.

Q. That is what he told you, that Richfield would find some excuse to get Mr. Colmery out of that station?

A. I get that statement from so many stations, counsel, that I just can't remember where I get them all.

Mr. Paradise: I ask that that be stricken, please, and confine yourself to my questions.

The Witness: I am.

The Court: You are positive he told you that?

[fol. 1745] The Witness: Oh, yes.

By Mr. Paradise:

Q. What was your conversation with Mr. Hall and when did that occur?

A. That occurred within the last six months. I can't put my finger on the exact date of that, but it was—your Richfield department can tell you when Mr. Hall took over that station. It was at the time when he took over that station, shortly after he took over the station.

Q. As nearly as possible can you fix the date of it?

A. Well, no. That would be pretty hard, counsel, for me to fix the date.

Q. Can you fix what month it was?

A. Well, as I recall it, it has been with—it was sometime between, possibly, since the first of the year, the first part of the year, maybe the last part of last year. But I think it was the first part of this year.

Q. You are talking about the first part of 1951?

A. That is right.

Q. And where did this conversation take place?

A. At his station.

Q. Who were present?

A. Just he and I. There was other help there, but then we were off by ourselves standing on the station lot.

Q. Standing on the lot?

A. That is right.

[fol. 1746] Q. Please tell me as fully as you can your entire conversation with Mr. Hall.

A. As I have testified this morning, he was trying to buy some Pennzoil through the Citrus Motor Co. because he didn't want to buy it on an invoice made out to him.

Q. Did Mr. Hall say this to you?

A. Yes.

Q. Yes. Will you please indicate what he said and what you said?

A. Well, Citrus Motors told me about it and I went over to find out what it was all about, and that is what he told me. And I asked him why he wanted to do that and he said, "Well, I don't want an invoice made out to me because," he said, "I can't handle Pennzoil here." I said, "Well, why can't you handle Pennzoil here?" He said, "Because I wanted this lease and the Richfield representa-

tive, whoever does that, submitted the lease to him and told him that he wouldn't give him the lease unless he would promise not to handle outside products." He didn't specifically say "Pennzoil." He said, "outside products," and that "if I did handle those products after he gave me the lease, that he would take ways and means of cancelling me out." "Therefore," he says, "I want the lease. I like the lease, so I can't take the chance."

Q. Did you ask him to show you the lease?

A. Oh, no.

[fol. 1747] Q. Had you had that experience with other Richfield operators, without telling about the conditions of their lease from Richfield, that they could not handle Pennzoil products or other competitive products?

A. Well, we don't discuss the leases. They just—I figure that that is rather private with them, and their story is that they would not be permitted to handle it and would be afraid to handle it for fear of what would happen if they did.

The Court: What counsel meant, discussion of the leases did not come up except as a part of other conversations relating to handling products, is that true?

The Witness: That is true.

The Court: All right.

By Mr. Paradise:

Q. Having been in the business of selling lubricating oils to service stations since 1929, Mr. Ellis, I presume you are familiar with the fact that various oil companies own service station properties and own the service stations?

A. Well, I have heard of it.

Q. And I presume you are also familiar with the fact that various oil companies lease service stations and own the buildings and pumps and tanks that are on those properties?

A. Yes, I believe I have heard of such a thing as that.

Q. Are you familiar with the fact that the Richfield [fol. 1748] Oil Corporation does that?

A. I would not be in a position to know one way or another whether they do or they don't. All I know is I

call on them to sell them Pennzoil and they tell me they can't handle it, and that is it.

Q. That was not my question, Mr. Ellis.

A. Oh.

Q. You are familiar with the fact that Richfield Oil Corporation does own service stations, are you not? I am not talking about any particular station. Perhaps you do not know which station is which.

A. I don't know which is which, no.

Q. When you go into a Richfield station do you make any inquiry whether Richfield Oil Corporation owns that station?

A. No.

Q. You do not?

A. I am not interested in that. I am interested in selling oil.

The Court: The only indication that you have as to the relationship of the company to him is the fact that it has the Richfield colors, is that true?

The Witness: That is true. Well, Judge——

The Court: You do not know the particular contract under which the man is operating? Did you just come in [fol. 1749] this morning or were you here last week?

The Witness: No, just this morning.

The Court: You heard them talking this morning about L-O contracts and other things. Have you ever seen any of them?

The Witness: No.

The Court: Do you know the difference between an L-O contract and the other two types that they are talking about?

The Witness: No, Judge. It is just like I said in my earlier testimony and on his cross-examination, they are all prospects to me and I am not interested in what kind of a station they are. If I can sell them oil, swell. If I can't, it is just too bad.

The Court: You do not know the conditions under which they work, and the only way you know that they have a lease of some kind is when they mention it?

The Witness: That is right.

The Court: You do not know the terms of the lease or how they are compensated or what, do you?

The Witness: No, I never go into that.

The Court: I see. All right.

By Mr. Paradise:

Q. You knew from Mr. Hall, however, that he had a lease from Richfield that could be cancelled if he sold or if he handled non-Richfield lubricating oils and greases?

[fol. 1750] A. He told me that they would cancel him out. I don't know what the lease was like. I have never seen it and he never even told me the terms of it.

Q. Your company is a competitor of the Richfield Oil Corporation in the sale of lubricating oils and greases at times?

A. Yes, I would say so.

Q. Do you consider the Richfield Oil Corporation a prospective prospect for your oil?

A. The company?

Q. Yes.

A. No, I would not say so.

Q. You have never tried to sell Pennzoil to Richfield?

A. No, not to my knowledge I haven't. Maybe somebody else has.

Q. Then it is a fact——

The Court: Do you deal with Richfield except through the stations?

The Witness: No. No, Judge.

The Court: All right.

By Mr. Paradise:

Q. You mentioned the Standard Oil Company case, Mr. Ellis. You are familiar with the fact that the Standard Oil Company has certain stations known as Standard Stations, Incorporated, painted red, white and blue?

A. That is right.

[fol. 1751] Q. You are also familiar with the fact that those stations are operated by salaried employees of the Standard Oil Company?

A. That is correct.

Q. Do you make an effort to sell your Pennzoil to those stations?

A. I never make an effort to sell directly anything, and that is what you would be doing if you were selling in the Standard Oil Company's retail service stations.

Q. Do you make any effort in that manner?

A. No.

The Court: Do you make efforts to sell to the Chevron stations?

The Witness: Yes, because they are independent dealers and they have their own tax number and they have to account to the California sales tax department for the sales they make.

By Mr. Paradise:

Q. Those are the independent dealers that you are referring to?

A. That is right.

Q. When you go to a Richfield station, as I understand—let me elaborate that—when you go into a service station painted in Richfield colors and talk to the operator, I understand that you do or do not ask the service station dealer or operator whether Richfield owns that station?

[fol. 1752] A. No, I don't, because I don't know that Richfield owns any stations to my knowledge.

Q. Well, my question is whether you do?

A. No.

Q. And your answer is you do not?

A. That is right.

Mr. Paradise: That is all.

The Court: All right. Any redirect?

Redirect examination.

By Mr. Somerville:

Q. Mr. Ellis, you testified that during a period of years you increased your sales of Pennzoil products. Have you increased your volume of sales to Richfield outlets?

A. Definitely not. In fact they are less than they were a year ago.

Mr. Paradise: The question has been answered.

By Mr. Somerville:

Q. Do you know whether Richfield stations you contact are operated by employees of Richfield? Do you have any information on that?

A. Well, to the best of my knowledge, Mr. Somerville, I don't know of any Richfield stations that are operated by Richfield operators in my territory.

Mr. Paradise: I move that that be stricken as having no proper foundation, calling for the conclusion of the witness.

The Court: I will sustain the objection. I allowed him [fol. 1753] to answer the question as to Standard because it was cross-examination. But I think this is a leading question. I will sustain the objection. He has already stated that he did not know the relationship.

By Mr. Somerville:

Q. You have testified, Mr. Ellis, on cross-examination that the various Chevron stations, the dealers there had their own sales tax numbers.

A. That is right.

[fol. 1754] Q. What is that? Do you know that from your own personal observation of those stations?

A. Well, because when I make a sale I have to get that number, if it is a new account. We have that number on file in our order department, and it is kept there until if it is changed or discontinued.

Q. And you do the same thing on contacts with Richfield outlets?

A. Oh, absolutely.

Q. Have you observed whether or not the Richfield dealers have been subjected to State sales tax collections?

A. Oh, Mr. Somerville, they all have to have a number. They have that from the State Tax Department, and I have picked them up as owners of the place.

Mr. Paradise: I move that the witness' answer be stricken as not material.

The Court: Oh, that is all right. If it is material——

Mr. Paradise: It is immaterial, and is the witness' conclusion.

The Witness: It isn't.

The Court: I think all after the statement that they have to have a number for the sales tax will be stricken.

Mr. Somerville: That will be all.

Mr. Paradise: No further questions.

The Court: All right. Step down.

(Witness excused.)

[fol. 1755] The Court: I think, gentlemen, we have got a good start. 2:00 o'clock.

(Whereupon, at 12:10 o'clock p. m. a recess was taken until 2:00 o'clock p. m. of the same day.)

[fol. 1756] Los Angeles, California, Tuesday, May 15, 1951. 2:00 P. M.

The Court: All right, gentlemen, call your next witness.

Mr. Hall: Mr. Weston.

Robert Weston, called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

The Clerk: What is your name, please?

The Witness: Robert Weston.

The Clerk: That is W-e-s-t-o-n?

The Witness: Yes.

By Mr. Hall:

Q. Where do you reside, Mr. Weston?

A. Seattle, Washington.

Q. I can't hear you.

A. Seattle, Washington.

Mr. Hall: Can you hear him all right?
Mr. Paradise: Yes.

By Mr. Hall:

Q. Seattle, Washington. Will you speak loud enough, please, so that the gentlemen here at the counsel table can hear you?
[fol. 1757] A. Yes.
Q. You are presently with the United States Government?
A. The United States Navy.
Q. The United States Navy. Were you ever at any previous time employed by the Richfield Oil Company?
A. Yes, I was employed in 1940; I believe it was '40 to '41. Then again from 1946 to '49.
Q. Your first employment was as what?
A. Junior merchandiser with the company.
Q. Will you explain, very briefly, what a junior merchandiser was?
A. Yes. At that time Richfield had several stations they evidently couldn't find dealers for, so they started this plan of bringing men in to work as junior merchandisers. They would work right in the station, and they gave you a correspondence course that you filled out while you were working in the service station.
Q. While you were in that position, were you just operating the station?
A. Yes.
Q. And paid a salary?
A. Yes.
Q. Then did your employment change or, first, how long were you working as a junior merchandiser?
[fol. 1758] A. Approximately six or seven months.
Q. Was that when you ceased your employment with Richfield?
A. Yes, I went in the service then.
Q. Then were you reemployed by Richfield after you returned from the Armed Services?
A. Yes.
Q. What was the date of that?
A. Well, I didn't—I got out of service in 1945, and it was

about a year before I again went back to Richfield. Then I went in as a merchandiser.

Q. Did you receive any instructions or training?

A. Yes.

Q. From whom?

A. Mr. Douglas, Barton Douglas, was the teacher in the school. It was held in the New Washington Hotel in Seattle, and I believe it was a two-week course.

Q. In what year was that?

A. 1947. It was either 1946 or '47.

Q. About how many were there in the class?

A. Approximately 12 to 14 men.

Q. Of that number, about how many were merchandisers?

A. Approximately around four. Four were merchandisers, and the rest were city salesmen and industrial salesmen.

Q. Did Mr. Douglas give you in that school instructions [fol. 1759] and training as to your duties and responsibilities as a merchandiser?

A. Yes.

Q. With respect to the manner of inaugurating or indoctrinating a new dealer, what were your instructions as to that?

A. You mean, contacting the dealer and showing him through the routine?

Q. Yes.

A. Well, normally, before we could make a selection on a dealer, he had to be passed by Mr. Gilworth, who was a Seattle branch manager at that time.

[fol. 1760] Q. You mentioned the word "select." Did you yourself sometimes select the dealers?

A. Yes. We would find them, contact them and see if they were interested in a station, and then if they showed that they were interested, we would take them down to Mr. Gilworth who would talk to them and impress upon them the value of taking a Richfield service station, and more or less check to see if they had the capital because on several occasions that I have known up there, Mr. Gilworth would not give a man an okay to go in the station until he actually saw he had the money in the bank. In several occasions I had to go with the fellow and go down to the

bank and brought the money back and showed it to Mr. Gilworth.

Q. What else would Mr. Gilworth tell them in that first interview?

A. Well, of course, he would impress on their minds that they were an independent businessman.

Mr. DeMartini: I move that be stricken as a conclusion of the witness.

The Court: I beg pardon? I did not catch the statement, the basis of your objection.

Mr. Hall: He says—do you want the answer from me or from the record?

The Court: No, I want the record, of course.

(Answer read by the reporter.)

[fol. 1761] The Court: Read the question also.

(Question read by the reporter)

The Court: I think that may remain. That can be considered a statement of fact.

Mr. Hall: Go ahead, Mr. Weston.

The Court: But try to avoid conclusions, you know, such as to say "he would impress." If you say "he did impress," that means a fact. "He would impress," may mean a fact and may not.

The Witness: All right.

The Court: I do not know whether you have ever testified in court before.

The Witness: No, I haven't. This is the first time.

The Court: Well, all right.

A. And after Mr. Gilworth would get through talking to them, and if he decided that the man would probably make a good dealer, then I would take him up to J. A. Westlake and Son.

Q. Who is J. A. Westlake and Son?

A. He was Richfield's TBA distributor in Seattle.

Q. All right.

A. And would take him to J. A. Westlake and Son and show him the stock, everything Westlake carried, which was classified as Richfield-approved merchandise. And we would make contact through J. A. Westlake and Son to [fol. 1762] purchase his lubrication equipment, grease guns

and tools, etc. And then after he put his initial order for stock in, then we would go down back to the branch office and go over what the company policy was towards operating a service station.

Q. May I ask you here what you explained to him the company policy was?

A. Yes. Hours of operation was one of the main items.

Q. May I ask you on that subject who determined the hours of operation?

A. Mr. Gilworth.

Q. And he communicated them to you?

A. Yes, sir.

Q. Go ahead.

A. And also, about cleanliness of the station, and one important item, about handling off-brand merchandise.

Q. What did you tell them relative to off-brand merchandise?

A. Definitely not, definitely not. They were not to handle off-brand merchandise. That was understood even before we actually took the man to see Mr. Gilworth. That was more or less understood by him. Then we would go over the—I believe it was their five-point system they had about how to approach the customer and more or less general routine of how to meet people when they came in the station.

Q. Was there anything further done before the man was [fol. 1763] established as a dealer?

A. Yes. If he was taking over a station that was already occupied by another dealer, we would impress upon the new dealer's mind that there was a lot of stock in there that he did not have to take. Some—well, maybe there was Quaker State oil or some different type of tires other than Goodyear tires or batteries. We would tell the new dealer that he did not have to take that merchandise. And we would also contact the outgoing dealer and assure him that all of the merchandise would be sold and that he would not lose anything by it. And then in the process of putting the man in the station, we would have to get this termination signed first, even before we could start making a check-out. Well, when that was signed——

Mr. Hall: Just a moment, Mr. Weston, if I may interrupt Mr. Childress, I would like to have this marked as Government's exhibit next in order.

The Clerk: Government's Exhibit 11 marked for identification.

(The document referred to was marked Plaintiff's Exhibit 11 for identification.)

Mr. Hall: Would you read that last answer back, Mr. Reporter?

(Answer read by the reporter)

The Court: Do you want him to finish? You interrupted [fol. 1764] the witness before he finished the answer.

Mr. Hall: I am sorry. I did not realize I had. I thought he was finished.

The Court: No. He said, "when that was signed"——

Mr. Hall: That is when I wanted to get this agreement, your Honor. It has not been in evidence.

The Court: Well, all right.

By Mr. Hall:

Q. I hand you Government's Exhibit No. 11 and ask you if that is the termination agreement that you have referred to just now?

A. Yes.

Mr. Paradise: May we see it?

[fol. 1765] Mr. Hall: The government will offer its Exhibit No. 11 in evidence, your Honor.

The Court: All right.

The Clerk: Government's 11 in evidence.

(The document, heretofore marked Government's Exhibit No. 11, was received in evidence.)

By Mr. Hall:

Q. Now, what happened with that termination agreement?

A. Then after this termination agreement was signed, then the outgoing dealer either had to take it or like it on the checking out.

Mr. Paradise: I move that that be stricken, if the court please. That is a conclusion.

The Court: That may be stricken. If you told him that, all right, but unless you did, why, you can't say that.

By Mr. Hall:

Q. May I ask, Mr. Weston, what were your instructions relative to the obtaining of this Form 306 Termination Agreement, on checking out?

A. What was that again?

Q. What were your instructions, either from Mr. Gilworth or any other superior as to what you should do as to getting this Form 306 Termination Agreement, Government's Exhibit 11?

A. My instructions were to get that signed, first.

Mr. Paradise: I object to that for lack of foundation. [fol. 1766] Can we establish the person and the time, please?

The Court: He gave it in the alternative.

By Mr. Hall:

Q. Do you recall who it was that gave you those instructions?

A. Mr. Gilworth.

Q. Mr. Gilworth?

A. Mr. Gilworth, the branch manager.

Q. Do you remember when?

A. Yes. Every time that we had a dealer checked out, that was one of the histories, to have the termination signed first.

Q. Did he make any other statements?

A. No, just to get that signed first.

Q. Very well. Did he give you any other instructions relative to the manner in which you should check out the old dealer?

A. No. That was more or less—we had a set way of doing it, and it was done the same way all the time. The termination first, and then checked the stock and the inventory.

Q. Now, in addition to checking in new dealers, did you also supervise these stations?

A. Yes.

Q. And about how often would you call on the station?

A. I had 25 stations in my territory, and I usually—[fol. 1767] about every—at least once a week I would hit each station.

Q. Will you inform the court what your instructions and your duties were relative to these stations,—what Richfield required you to do?

A. Well, other than seeing that the maintenance was kept up all the time, it was our job to check the dealer's books at different intervals, to make sure that he was up on his sales, and the right average of sales, and also to assist him in merchandising and canvassing the neighborhoods, and we worked with the dealer a lot of times to assist him in just general operation of the station.

Q. What did you do relative to checking his stock or inventory?

A. Well, on checking his stock, we always had—I forget what they were—had one for each size of station, and he had so much stock he was to handle or keep at that station, and it was our business to see that that stock was kept up all the time, and that he carried Richfield approved merchandise.

Q. What were your instructions if you found merchandise in there that was not Richfield approved merchandise?

A. Well, we were told to get that out of the station some way or other. They always stressed that we, being salesmen, could sell a dealer on the idea of only handling Richfield [fol. 1768] products, and if we did find anything at the station, such as Quaker State oil or MacMillan Ring-Free oil, or other tires and batteries, we could tell him to get it off the station or he would know what the consequences would be, because he was told that before he went in the station.

Q. Were you given any instructions as to what you should do in case the dealer would not get rid of those unapproved products?

A. Yes, sir. In several cases I would make my report to Mr. Gilworth, and Mr. Gilworth would say, "Keep your eyes open for a new dealer, and we won't tell the dealer about it, but when we get a new dealer, we will make arrangements to get the other man out."

Q. Calling your attention to a dealer by the name of Don Wright. Do you remember him?

A. Yes, sir.

Q. Do you remember taking care of his station——

A. Yes, sir.

Q. —in line of your duties? Where was his station located?

A. 73rd and Aurora in Seattle, Washington.

Q. In Seattle, Washington. What was the experience you had with Don Wright, and will you kindly place the date as nearly as you can, Mr. Weston?

[fol. 1769] A. Well, I think this started in 1947, I believe, or '46, the latter part of '46, that Don Wright had Quaker State oil in his station, it was said, and Mr. Gilworth knew it was there, and he contacted me all the time and would ask me if Don Wright had gotten that Quaker State oil out of the station. And a lot of times I would tell him that Don Wright had told me that this was the last batch he was going to buy, he wouldn't re-stock again as soon as this was gone, but that kept on all the time, and, finally, we made a dealer change.

Q. At whose suggestion was the dealer change made?

A. Mr. Gilworth and Mr. Chapman.

Q. I call your attention to a man by the name of Urick, who had a station at 185th and Aurora. Do you remember Mr. Urick's first name?

A. Ray, I believe, sir.

Q. Did you service that station?

A. Yes, sir.

Q. Will you tell us your experience in relation to that, with the date, if possible?

A. I think that was about in the latter part of '48 that he had off-brand merchandise in his station, oils, and he was also terminated because of that and the station being dirty.

Q. I will direct your attention to a station operated by [fol. 1770] Harold Pierce at 85th and Greenwood in the city of Seattle, and ask you what experience you had relative to that, and kindly fix the date as nearly as you can.

A. Harold Pierce——

Mr. Paradise: Is that the Harold Pierce who has already testified as a witness here?

Mr. Hall: Yes.

The Witness: My experience with him was handling, I believe it was spark plugs, if I remember right. He had spark plugs other than Champion plugs in the station, and that was just one item. He was in, I think, twice before Mr. Gilworth, and had a conversation about the stock in the station, and which later developed that Mr. Pierce checked out and took the station across the street, a Texaco station.

By Mr. Hall:

Q. What was the Richfield approved brand of spark plugs?

A. Champion plugs.

Q. Do you recall the brand Mr. Pierce was handling?

A. I think it was A-C, I believe A-C plugs.

Q. Now, did you also have an experience with the operator of a station at 95th and 35th Avenue Northeast, run by McFadden & Stowell?

A. Yes, sir.

Q. Will you relate that?

[fol. 1771] A. That was a new station, and this was in the year 1948, I forget the exact date, but I put them in the station. They were employed by Richfield, they worked in the office, and they borrowed the money from Richfield to go in the station. Richfield loaned them the money, it was $2500, with the idea their monthly payments would be—I forget what the payments were—I think they were around $50 a month, and that I would have to check that stock once or twice a month to make sure that it was up. So in doing that, they got down a little below what Richfield thought was a safe investment. I don't think it ever exceeded $150 or $200 below the actual stock investment, but at one time I did find Quaker State motor oil in the station, and I reported it to Mr. Gilworth. Mr. Gilworth reported it, evidently, to Mr. Kirby, who was a division manager, and Mr. Gilworth told me to start looking around for another dealer, that they wanted to get them out because Richfield didn't think they were a safe investment, which at that time I don't think they gave them actually a chance in the station, because they had only been in there—I don't think they had even been in there a year yet. But we did terminate them.

Q. When did you cease your employment with Richfield as a merchandiser?

A. I think it was in June of 1949, I believe, or '48. I can't [fol. 1772] remember correctly.

Q. From your employment as a merchandiser, where did you go?

A. I took over a Richfield station located at 35th and 65th Northeast in Seattle.

Q. How long did you operate that station?

A. About 10 months.

Q. While operating that station, did you ever receive requests from customers for brands of oil or accessories, or tires and batteries, other than Richfield approved?

A. Yes, sir, we did.

Q. Was that once or many times?

A. Oh, quite a few times. We had a lot of credit card customers that would buy gasoline from us, but they would go down the street to a Richfield station located at Union Bay Village, I believe it is, down there, and Sand Point Way, and get MacMillan Ring-Free oil. That was a Richfield station. It was an independent station, independently owned, and I would lose a lot of business to him, especially lubrication business.

Q. While you were operating this station, you were a lessee in it?

A. Yes, sir.

Q. Did you ever have any opportunities to purchase other type batteries or other accessories cheaper or which would [fol. 1773] have a greater margin of profit than those which were approved by Richfield?

A. Yes, sir.

Q. Were those items of comparable value and competitive to the items of Richfield?

A. Yes, sir.

Mr. Hall: You may take the witness.

[fol. 1774] Cross-examination.

By Mr. DeMartini:

Q. Mr. Weston, when you were re-employed in 1946, I understand you were re-employed as a merchandiser, is that correct?

A. That is right.

Q. Is it correct that the duties of a merchandiser were confined strictly to the L-O stations?

A. Yes, sir.

Q. You understand the difference between the L-O station and the 337 and 3-C deals, do you not?

A. Well, I worked only with the L-O units.

Q. You had nothing to do with the others?

A. I had nothing to do with the independents.

Q. You testified that when you had a prospect for a station that you would take him to Mr. Gilworth, is that correct?

A. That is correct.

Q. And who was Mr. Gilworth?

A. He was the Seattle branch manager.

Q. In connection with the investigation as to cash or finances which were required of an operator in order to go into business, was it true that Richfield had a policy of loaning money to prospective service station operators?

A. Yes, but I was instructed on that, that Richfield would want to get away from that if at all possible.

[fol. 1775] Q. But you did secure prospects and install operators to whom Richfield did loan money in the Seattle district?

A. Yes.

Q. When you would take them to Mr. Gilworth would you sit in on the meeting with Mr. Gilworth had with the operator?

A. Yes.

Q. On how many occasions did you sit in with Mr. Gilworth in connection with the discussion with an operator?

A. Oh, I would say two or three hundred times.

Q. Would you say that each of these instances followed a pattern of conversation?

A. Yes.

Q. Would you state exactly what was said by you and the operator and Mr. Gilworth and whoever else was present?

A. Well, Mr. Gilworth, as I said before, would——

Q. No. I want the conversation.

A. Well, I can't remember the conversation word for word.

Q. Well, what would he say? You said before that he stated certain things.

A. He would ask the dealer what he had done before and if he had ever had experience in a service station. And he would point out the Richfield's policy, such as painting the stations at least once a year or washing them, and also tell them about the help that they get from the merchandiser. [fol. 1776] And his job there was just sizing the man up to see if he could qualify as a Richfield dealer.

Q. What else would he say?

A. I imagine that just about covers it actually, as a man would tell the—also tell the man actually how much money he would need to go into a service station.

Q. Did he explain the 24-hour lease that he would be installed under?

A. Yes.

Q. And did he explain the use of the 24-hour termination privilege?

A. Yes. That was stressed on the station maintenance.

Q. What was said with respect to that clause on the use of it?

A. Well, I think he said that—Mr. Gilworth would usually, as I remember, would tell them that if the station was not kept clean and if the equipment was not kept in order, that the Richfield Company could terminate it within 24 hours, or the dealer could, as I remember. I haven't been in contact with them for quite some time.

Q. And he told them at that time about the program of Richfield regarding the merchandising of the station from time to time?

A. Yes.

Q. Now, you say that he impressed upon him that he was [fol. 1777] an independent businessman. What did he say?

A. Well, it is more or less taken for granted that a man leasing a station would be an independent businessman.

Q. So that he did not say anything in that regard, did he?

A. He has several times mentioned to a man that "You are getting a chance now to be an independent businessman."

Q. Did he actually use those words?

A. Yes, at several times he did use those words.

Q. Can you remember any specific occasion when he used those words?

A. Oh, I think probably in just about every dealer that went in, off and on. I can't remember the exact conversation.

Q. How would he tell them that? Give us his exact words.

A. It is kind of hard to do.

Q. What did he say? You have told us he told them he was an independent businessman. In what manner did he tell them?

A. Well, he would more or less try impressing upon their minds the value of taking over a station, over a Richfield station, and also something about "You have a good chance to make a good go of it now. You are an independent businessman. You are in business for yourself and Richfield will give you all the assistance in the world. "That is why we [fol. 1778] have a merchandiser," or something. That is about as close as I can come to it.

Q. At the same time he told them that they had to handle Richfield products and he was subject to being dispossessed on 24 hours notice, didn't he?

A. No, he never mentioned anything about if he handled off-brand merchandise he would be terminated. That was my job.

Q. You told them?

A. That was a merchandiser's job.

Q. You referred to Don Wright, Ray Urick, Mr. Pierce, and McFadden and Stowell. All of those were L-O operators?

A. Yes, sir.

Q. In connection with the station that you had under lease, Mr. Weston, that was at 65th and 35th Northeast, is that correct?

A. Yes, sir.

Q. Do you recall now what rent you paid on that station? I can show you the lease.

A. I think it was a flat fee of $40 a month to start, I forget exactly what it was.

Q. I will show you the lease to refresh your memory.

A. 40.

Q. 40.

A. And a cent a gallon over 4,000.

[fol. 1779] Q. I will show you an amendment to that lease dated March 25, 1949 which specifies that "irrespective of anything to the contrary contained in said lease, rental payable thereunder, commencing the first day of June, 1949, shall be $1.00." What were the circumstances of the execution of that amendment?

A. Well, at that time the road in front, they were putting in a sewer, and also, I think it was—anyway, the road was torn up there for about three months, I believe June, July, August and it ran sometime into September, I believe, where the road was closed. They brought the rent down to a dollar a month during that time, and I believe the gallonage dropped down to about 3,000 gallons a month, somewhere in there. And then about that time they blocked off the other side so I was closed about a week there, unable to get in the station at all, and that is why they dropped the rent down. And then right after that, after this had gone through, they came through with having these full loads of gasoline, putting $1,200 underground.

Mr. DeMartini: That is all. I think you have answered my question. That is all.

The Court: All right.

Mr. Hall: Just one more question.

[fol. 1780] Redirect examination.

By Mr. Hall:

Q. Relative to these loans that Mr. DeMartini spoke about, did those loans, if they were negotiated by Richfield, also include a $50 service charge payable to Richfield?

A. Yes, in some cases I believe that was true. I have never had occasion to get into any loans like that. I believe there was a service charge. I forget what the exact amount was.

The Court: Did you insist on it, did you forego it, or what?

The Witness: Usually you had to pay it.

The Court: I see.

Mr. Hall: That will be all. Thank you, Mr. Weston.

The Court: All right, gentlemen, call your next witness.

Mr. Hall: Mr. Shewbridge.

The Court: You may be excused, sir.

Mr. Hall: Yes. Mr. Shewbridge, will you take the stand, please?

Bernarr Shewbridge, called as a witness by the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: What is your name, sir?

The Witness: Bernarr Shewbridge.

[fol. 1781] Direct examination.

By Mr. Hall:

Q. Your present residence?

A. Is in Seattle.

Q. And what is your present employment?

A. I am an electrical contractor.

Q. Were you ever employed by Richfield Oil Corporation?

A. Yes, sir.

Q. As what, in what capacity?

A. As a merchandiser.

Q. Pardon?

A. As a merchandiser.

Q. When?

A. The latter part of '46 through '47.

Q. Will you relate the circumstances relative to your being hired by Richfield?

A. How do you mean that?

Q. Did you apply to Richfield for the position?

A. Yes, I did.

Q. After you returned from the war?

A. That is right.

Q. Did you undergo any training or instructions?

A. Yes. I had a two weeks' school conducted by Dick Weir.

Q. Was this before you entered into your duties as a [fol. 1782] merchandiser?

A. No. I was out in the job for, oh, possibly a month before I went through the school.

Q. Where was this school held?

A. In the Roosevelt Hotel, Seattle.

Q. And about how many were attending that school?

A. Oh, possibly nine or ten.

Q. Of that number about how many were merchandisers?

A. Oh, five or six.

Q. And the others were salesmen?

A. Salesmen.

Q. What instructions or directions were given you at that training school as to the manner in which you should perform your duties as a merchandiser?

A. Not too much in the manner in which we operate as merchandisers. Possibly more on selling, on orientation course of Richfield products, what they were, and so forth.

Q. Where did you receive the bulk, then, of your instructions, relative to your duties as a merchandiser?

A. Through Mr. Gilworth.

Q. And what did he tell you your duties and responsibilities were?

A. To oversee the leased out stations in our territory, check them and see that the dealer was operating properly, assist him in any possible way we can, and that is about all.

[fol. 1783] Q. What did he say relative to what you should do when you were checking in a new dealer or obtaining a new dealer? Did he give you any instructions as about hiring a new dealer?

A. No, not too much. Rather, if we found a new dealer, prospective dealer——

The Court: That is better, because a "new dealer" has a very bad connotation these days. Mr. Fulton Lewis, Jr. would not allow it to be used in the court.

The Witness: Excuse me.

Mr. Hall: I perhaps provoked the term, but there was no political implication, Judge.

The Court: All right.

A. On the prospective dealer we would pick out and bring him to Mr. Gilworth for an interview, and in that way Mr. Gilworth would tell us whether he was suitable or not.

By Mr. Hall:

Q. Did you sit in at those interviews?

A. Yes. Yes, sir.

Q. What did Mr. Gilworth tell the prospective dealer?

A. Oh, he would tell him what Richfield might expect of him and what the reason that, if there was any particular station involved that he was interested in and we were thinking of making a change, well, he would talk mostly about that station, what its possibilities were, why it was falling down now, if it were, and things of that nature. [fol. 1784] Q. And what did he say relative to what Richfield expected of this prospective dealer?

A. Well, hours. The chances are that they would want that station kept open longer.

Q. When you say "they" whom do you mean?

A. Pardon?

Q. When you say "they" would want the station kept open, who do you mean?

A. Richfield.

Q. Richfield. Now, did you finish your answer?

A. I think so.

Q. What was said relative to the products that he was to handle?

A. Well, it more or less, to my knowledge, was an understanding. It was more or less unwritten that he was to handle Richfield products. I mean I have never run into a case where anyone in a service station would not figure that they had to put in the gasoline that they were leasing the station from.

Q. Did you ever tell any of these prospective dealers or dealers who were signed up what they should handle and what they should not handle?

A. Yes.

Q. What did you tell them they should handle?

A. Richfield products and approved merchandise, and it [fol. 1785] was through the explanation that there was a lot of advertising connected with these different items and Richfield advertised them and they were nationally advertised, and they could be carried on the credit card, etc., and in that manner it would be to his advantage that these items be carried in the station.

Q. What did you tell them relative to the items which they could not carry?

A. That they were not approved by Richfield and they were not to be kept in the station.

Q. Did you tell them what would happen in case they did keep them?

A. Well, usually not to a prospective dealer, not to get too harsh right away with him.

Q. Did your duties require that you supervise or police these stations?

A. Yes.

Q. Regularly?

A. Yes.

Q. About how often?

A. About once a week you would call on a station.

Q. What were you- duties and responsibilities in relation to checking on the products that were being sold or handled in that station?

A. Well, it is usually pretty easy to see what he is handling.

[fol. 1786] Q. Well, what did you do? Just tell us. We want to know what you did.

A. Go in and look his stock over. It is usually all on display. And if there are any items that were not approved by Richfield, I would call him over to one side and tell him that he would have to get rid of them. We didn't want them in the station.

Q. Was there anything else that you told him that he would have to do with regard to those?

A. In regard to those items?

Q. Yes.

A. No, I don't believe so.

Q. If he refused to get rid of them or continued to carry them, what would you do?

A. Usually, if I didn't do it myself, I would get instructions from Mr. Gilworth to change dealers.

Q. Did you ever find that any of these dealers hid any of their unapproved merchandise in the stations?

A. Oh, yes. If you wanted to snoop, you could probably find it in the greater majority of stations.

Q. What instructions did you receive relative to the manner in which you should check out an old dealer?

A. The same as Mr. Weston. We would get the signature of the outgoing dealer on his termination paper first and then proceed with the check-out and in.

[fol. 1787] Q. Did you ever tell the old dealer anything about what he could expect relative to the incoming dealer purchasing his items of stock, merchandise or equipment?

A. No, not to any great extent. It would come up sometimes. Dealers at the time they went in were usually told that the off-brand merchandise that they carry would not have to be purchased by the new dealer—excuse me, Judge—the prospective dealer when he would come in, so that at the time he was leaving the station he would know that the dealer replacing him would not have to buy all his merchandise. Did you follow me there?

Q. I followed you. Calling your attention to a service station at Summitt and Olive Way in Seattle which was operated by Bob Rutledge, will you state whether or not you ever had any experience in relation to products that he was handling?

A. Yes.

Q. When was this, do you recall?

A. Probably the early part of '47.

Q. Now, will you relate the circumstances?

A. Yes. Bob had a good customer who wanted Pennzoil in his car and had driven the car—oh, approximately 90,000 miles and used nothing but Pennzoil and was really sold on it. So Bob kept Pennzoil for him hidden away in a cupboard back in the lube room. I didn't find it. Bob told me about it, that he had the oil there. And I mentioned [fol. 1788] it to Mr. Gilworth and explained the circumstances through which Bob was carrying this oil, and Mr. Gilworth said that Bob and myself were to try to convince this customer and sell him on the idea of either Richfield Penn or Richlube, and if we could not sell him on it, that Bob was to let the customer go.

Q. Was there anything further transpired in relation to that incident?

A. I relayed the information to Bob and, as far as I

was concerned, the subject was ended. I think he kept the customer. I don't know what he did about the oil.

Q. Calling your attention to Bert Lynch——

The Court: You are of a very understanding nature.

The Witness: That is why I haven't got the job, either, Judge.

By Mr. Hall:

Q. Calling your attention to a service station at 214 West Mercer Street in Seattle, Washington, operated by Bert Lynch, will you state what happened in regard to that station, from your experience?

A. Yes. Mr. Gilworth would pass by Bert's station every morning on his way to work and would stop in there usually for his gas and his oil. And, of course, on our morning meetings—well, I would be sitting there under the gun and he would ask me what took place at Bert's and whether he was carrying any off-brand merchandise, etc. He knew his hours pretty well, so that was not brought up too often, [fol. 1789] but it was on the off-brand merchandise. He evidently found some MacMillan Ring-Free Oil there himself, Mr. Gilworth had, or seen the empty cans there at one time or another. He asked me to go check and see if he still had it and under what circumstances he was having it.

Q. What did you do after you got those instructions?

A. I told Bert about it. Bert knew that he was not to keep it. It was not a matter of ignorance on his part. He told me why he was keeping it. He had a good customer that wanted MacMillan Ring-Free Oil and he was keeping it for him, only had two cases on hand, I believe. Mr. Gilworth instructed me to tell Bert to get rid of it or we would check him out.

[fol. 1790] Q. Do you know whether or not he got rid of it?

A. I think he found——

Q. First, did you communicate that information to Mr. Lynch?

A. Yes, sir.

Q. Do you know whether or not he got rid of the MacMillan oil?

A. He moved his hiding place.

Q. Will you tell us what your experience was relative to the insecticide drive that Richfield conducted?

A. That was a sad case with me, that insecticide.

Q. When was it?

A. I believe it was in December, 1947, I think, or the spring.

Q. What were your instructions as to merchandising this insecticide?

A. To see that all dealers had insecticide on their shelf.

The Court: Oh, you didn't think you needed insecticide up in Seattle?

The Witness: That was my contention, Judge.

The Court: On the Pacific Coast they do not have screens on their windows and doors, and that is true in Seattle and Tacoma. I had better give them that compliment, they do not have screens on their windows or doors because [fol. 1791] insects are too scarce.

Mr. Hall: They get waterlogged, I believe.

The Court: I don't know why, but they don't need them there.

Mr. Hall: That is all, Mr. Shewbridge. Your witness.

Cross-examination.

By Mr. DeMartini:

Q. Mr. Shewbridge, as a merchandiser your activities dealt solely with the L-Os?

A. Yes, sir.

Q. You had nothing to do with the accounts which we refer to as the accounts with dealers written on the 337 or 3-C papers?

A. No.

Q. Do you know what employee handled or sold to that type of account?

A. Salesmen handled those accounts. They were what we called independent accounts.

Q. You referred to the Lynch station, and I don't believe you gave the last name of Bob.

A. Rutledge, E. W. Rutledge.

Q. Both of those were L-O stations, were they not?

A. Yes, sir.

Mr. DeMartini: I think that is all.

[fol. 1792] Mr. Hall: That is all. Thank you, Mr. Shewbridge.

The Court: Step down.

(Witness excused.)

The Court: Call your next witness.

Mr. Hall: Mr. Pitts.

Raymond B. Pitts, called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

The Clerk: What is your name, please?

The Witness: Raymond B. Pitts,

The Clerk: P-i-t-t-s?

The Witness: Yes.

By Mr. Hall:

Q. What is your present residence, Mr. Pitts?

A. Tacoma, Washington.

Q. I didn't hear you.

A. Tacoma, Washington.

Q. Tacoma, Washington?

A. Yes, sir.

Q. Were you formerly in business or had a business relationship with the Richfield Oil Corporation?

A. Yes, sir.

[fol. 1793] Q. What was that business relationship?

A. It was a TBA relationship.

Q. A TBA distributor?

A. Yes, sir.

Q. Were you alone or in partnership?

A. No; with Mr. J. A. Westlake.

Q. When did you first become associated with Richfield in this enterprise?

A. April 1, 1944.

Q. Will you state the circumstances relative to your doing business with Richfield?

Mr. Paradise: Will you also speak a little louder, Mr. Pitts? We have difficulty in hearing you.

The Witness: Yes, sir. I will.

Why, I had known Mr. Westlake for several years, and for a few years prior to this I had been working for the government. So he asked me to go in business with him on this TBA set-up, and that was how I happened to go in with him.

By Mr. Hall:

Q. Now, whom did you meet with in the Richfield Oil Corporation?

A. Well, I only had one meeting before going into business at the Richfield Oil home office building at Seattle, and [fol. 1794] I believe that was in March, sometime right around the 1st of March, 1944, and I met Mr. Kirby at the time, and I met Mr. J. T. Foster, I believe the initials are, and that is the only two gentlemen I remember. Mr. Foster was the man we talked to most of the time about arrangements with the TBA set-up.

Q. Was there any written agreement entered into between you and Mr. Westlake and the Richfield Oil Corporation relative to this TBA distributorship?

A. No. sir.

Q. Will you please tell us what statements Mr. Foster, or any other representative of Richfield, made to you on this day when you made the deal?

A. Well, I can't tell the exact words, sir, but we were to handle Richfield products, certified products, and that was during the war, things were pretty rough, and the contracts which Richfield had with their various suppliers, that material was to be turned over to us to distribute to the Richfield stations, and we were to establish routes and contact these stations at least once a week after we got started. We was to buy a truck and contact these stations in, roughly, the city of Seattle at that time, which was the territory that we were to have at that time.

Q. Will you tell me what arguments or persuasion Mr. Foster used to influence you to go into this business?

Mr. DeMartini: I will object to that as calling for a [fol. 1795] conclusion, your Honor.

By Mr. Hall:

Q. What statement or promises——

The Court: What did he say?

By Mr. Hall:

Q. What did he say?

A. I would say that it was more Mr. Westlake that got me into the business than it was Mr. Foster. Mr. Foster didn't influence me in any way, sir.

Q. Did he make any statements to you that day as to why you should——

A. No, except that he said it would be a good business proposition, because the Richfield stations were increasing at all times, and that their TBA distributors' business should increase in proportion to the increase in stations and gasoline sales, as well as sales of accessories and supplies.

Q. Were there any statements made to you as to the type of items, goods, tires, batteries, et cetera, which you could handle or could not handle?

A. Yes, sir.

Q. What did he say?

A. We were to handle Richfield certified products, their line of certified products.

Q. Was there anything said as to what you should not handle?

A. No. The statement was only that.

[fol. 1796] Q. Did you at any time while you were operating this business with Mr. Westlake carry any items that were not approved items?

A. Yes, sir, I did.

Q. Did you run into any trouble with any of the Richfield officials because of that?

Mr. Paradise: That calls for a conclusion. We would prefer to have the conversations.

The Court: That merely directs his attention. He said, "Trouble." He means "difficulty." You may answer "Yes" or "No."

The Witness: Yes.

By Mr. Hall:

Q. Did you have any conversations with any Richfield official?

A. Yes, I did.

Q. Will you state the circumstances?

A. Well, this happened about around October—September or October, 1945. I had bought some Wynn oil. Various dealers asked me if I would buy some Wynn oil for them, and one dealer had a 10-gallon can sitting in his service station, and Mr. Foster come up, and he was rather perturbed, and he told me, he says, "Even if you are working on your own money, I'll get you for this yet." And that was the only trouble or the only time that he had anything to say.

[fol. 1797] Q. Is that the only incident in which you ever carried any items that were not Richfield approved?

A. Yes, sir.

Q. That was?

A. That was the only time I had any conversation with a Richfield supervisor or district manager concerning any items.

Q. And this was what time?

A. It was either in September or October, 1945.

Q. When was your relationship with Mr. Westlake and with Richfield severed?

A. January 1, 1946.

Q. Was that voluntary on your part?

A. Yes. Mr. ——

Q. Did you initiate the severance?

A. No, sir. Mr. Westlake was at a meeting down at the Richfield Oil Company, and he come back and told me that Richfield was not satisfied with my merchandising, and I told Mr. Westlake, all right, I would sell my partnership to him, so that he could go on, and I didn't contact Richfield at all.

Q. Will you tell us what your general procedure was when a change of service station operators was being made?

A. Well, usually the station representative would call us and tell us that they were putting in a new man.

[fol. 1798] Q. What do you mean by "station representative"? The operator of the station?

A. No, no, the Richfield—what do they call them—the man that went around and overseen all the stations for Richfield?

Q. The merchandiser?

A. Yes, the Richfield merchandiser would call us and tell us there was a new man to be put in the station, and to meet the new man down there at the time, and see what supplies he needed. And in many instances we even went down and priced the articles for the dealer that was leaving the station, because in many instances he didn't have his cost price on the articles, and he didn't know exactly what his material was worth.

The Court: That is for the approved items?

The Witness: Yes, sir. That's the only thing we touched, sir, the approved items.

By Mr. Hall:

Q. Now, in this period of almost two years in which you operated this TBA distributorship, was there any distinction made in your sales as between any of the Richfield stations?

A. No, sir. No, sir.

Q. You sold all Richfield stations indiscriminately?

A. Yes. I didn't know which station was an L-O, and so forth, and so forth. It didn't make any difference. We [fol. 1799] were to service all the Richfield service stations in the city of Seattle that we could possibly reach.

Mr. Hall: That is all. Your witness.

Cross-examination.

By Mr. DeMartini:

Q. During the period that you were in business with Mr. Westlake, Mr. Pitts, I understood you to say that this type of product was short; is that correct?

A. I didn't understand, sir.

Q. This type of product was short, was hard to get?

A. All types of products were hard to get at that time, during the war. We couldn't get enough to supply the stations.

Q. Were these products allocated at all by Richfield?

A. May I clarify that? Do you mean were they allocated to us, or to the various Richfield stations?

Q. To the Richfield stations.

A. No, sir. Richfield shipped their Champion spark plugs, —for instance, they had the contract on their spark plugs come to us, and we tried to see that all their stations had a few spark plugs. In other words, we didn't try to let some of the big stations have all the plugs over some of the smaller stations. We tried to give all the boys some of the stuff as we went along.

[fol. 1800] Q. You didn't have any difficulty in selling these items?

A. No, sir. It was a buyer's market at that time.

Mr. DeMartini: That is all.

Mr. Hall: That is all, Mr. Pitts.

The Court: Step down.

(Witness excused.)

The Court: Call your next witness. The population of Seattle must be decreasing while this case is going on.

Mr. Hall: I believe it is being rapidly replenished, however, your Honor.

Mr. Greer: Mr. Guy Lenton.

Guy Robert Lenton, called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

The Clerk: What is your name, please?

The Witness: Guy Robert Lenton.

The Clerk: The spelling of the last name, please?

The Witness: L-e-n-t-o-n.

By Mr. Greer:

Q. Where do you live, Mr. Lenton?

A. 6115 North Interstate Avenue, Portland. Oregon.

[fol. 1801] Q. What is your occupation, sir?

A. Service station operator.

Q. Have you ever in the past leased a Richfield service station outlet?

A. I have.

Q. When did you last do so, sir?

A. In the spring of '49.

Q. Where was that station?

A. 4871 North Lombard. I believe that's the exact address.

Q. Can you recall the name ot the Richfield supervisor who installed you in that station?

A. Holden.

Mr. Paradise: What was that name?

The Witness: Dave Holden.

By Mr. Greer:

Q. How do you spell that name?

A. H-o-l-d-e-n, I guess.

Q. That was in the spring of '49?

A. That's right.

Q. Have you ever operated a Richfield service station prior to that time?

A. Yes, sir.

Q. Was that also a leased out station?

A. Yes, sir.

Q. When was that?

[fol. 1802] A. Oh, that was about '45 or '46.

Q. Was this second station that you took over, Mr. Lenton, a new station or had someone else already been in it?

A. This was a new station.

Q. How large an investment were you required to make in order to lease it?

A. Approximately $3500.

Q. Were any instructions given to you at the time you went into it as to what products you would handle?

A. No, not when I first went in.

Q. Were any instructions given to you subsequently?

A. After I went in, yes. A few days afterward I was told not to handle anything but Richfield products.

Q. Who told you that?

A. The merchandiser.

Q. Mr. Holden?
A. Mr. Holden.
Q. Where did he tell you that?
A. In the station.
Q. Did you ever handle any merchandise other than Richfield products?
A. I did.
Q. Tell the court what you did handle?
A. Well, I handled Quaker State oil, A-C spark plugs and Fram filters.
[fol. 1803] Q. Are they approved Richfield products?
A. No, sir.
Q. From whom did you purchase the Quaker State oil?
A. Christensen Oil Company.
Q. From whom?
A. The Christensen Oil Company.
Q. What agent of that oil company did you deal with?
A. Mr. Turner.
Q. I want you to tell the court whether or not that Quaker State oil was delivered by the normal means that that oil company delivered its oil.
A. No. I would call Mr. Turner personally and he would deliver it in his own car, because if they delivered in a truck and some official come along, why, that would be too bad.
Q. Are you acquainted with the normal practices of oil companies in delivering packaged oil, Mr. Lenton?
A. Well, they deliver, most of them, with their own trucks. Is that what you mean?
Q. Is it customary for these companies to deliver their oil by truck?
A. Absolutely.
Q. Was it the normal procedure for the man who sold you the oil to deliver it himself in his own car?
A. No, sir.

[fol. 1804] The Court: Did you suggest that he deliver it in his car, or did he?
The Witness: No, I suggested it.
The Court: You suggested it?
The Witness: Because if they delivered it in the truck

and somebody would go by and see that truck there, why,——

The Court: You have already told us the reason, but you didn't tell us whether it was your idea or whether he suggested it.

The Witness: It was my idea.

The Court: Your idea. All right.

By Mr. Greer:

Q. Did you ever have any conversation with Mr. Holden, or any other Richfield supervisor, about that Quaker State oil?

A. Well, he told me I shouldn't handle Quaker State oil.

Q. What did you tell him?

A. Well, I told him I had customers that used Quaker State oil, or people would come in and ask for Quaker State oil, and that I was in business, and that I would like to sell it.

Q. Do you recall what his reply was?

A. He said to keep it out of the station, to not have any in there at all.

Mr. Greer: The witness is with you.

[fol. 1805] Cross-examination.

The Court: Who is going to carry the laboring oar? You gentlemen shift so fast, and the government does, too, so when I don't look up I realize I am listening to a different voice.

Mr. Dixon: A little variety, Judge.

The Court: Yes, with four of you, and two of them.

By Mr. Paradise:

Q. Mr. Lenton, which of these two Richfield L-O stations that you mentioned was the one where you made the $3500 investment?

A. The 4871 North Lombard. That was the new station.

Q. That was the new station?

A. Yes, sir.

Q. Mr. Lenton, I will show you a service station lease, dated April 22, 1949, on Richfield's printed form No. 542,

with print date of 8-46, and ask you if that is the lease which you signed covering the station that you have just described.

A. This—yes, I signed that lease, but that is the second lease I had on the station.

Q. Now, the original lease provides for a rent, does it not, a minimum rent of $50, plus an additional rent of one cent per gallon on each gallon in excess of 5,000 gallons?

A. Yes, sir.

[fol. 1806] Q. Then I will also call your attention to a rental amendment, which is attached to this lease, on Form No. 542-E, which is dated June 7, 1949, and ask you if you also signed that.

A. Yes, sir.

Q. Is it correct that this calls for a revised rental of $30 a month, with a gallonage rental of one cent per gallon in excess of 3,000 gallons?

A. It is.

Q. Now, attached to the original lease are several pages on forms No. 542-B, 542-C, and 542-D, which contains a description of various items of equipment. I will ask you this: Is it not true that these are the items belonging to Richfield, and that this is an inventory of the items of equipment which were on the station at the time you went in.

A. (Examining documents) Right.

Q. Now, the $3500 investment that you mentioned, what did that consist of?

A. Gasoline, oil, and accessories.

Q. It didn't cover any of the items listed on any of these schedules?

A. No, sir.

Q. Now, you mentioned that during the time you occupied this station, you handled A-C spark plugs; is that correct?

[fol. 1807] A. Yes, sir.

Q. And Fram filters?

A. Yes, sir.

Q. And also Quaker State oil?

A. Yes, sir.

Q. Those, you also mentioned, were not approved by Richfield——

A. That's right.

Q. —for credit card purposes?

A. That's right.

Q. Did you ever sell any of those on Richfield credit cards?

A. No, sir, I never did.

Q. Now, when did you leave that station on Lombard?

A. It was about three months.

Q. Pardon me?

A. About three months. I don't remember just the date.

Q. About three months later, after you moved in?

A. Yes.

Q. At the time you moved out, did you make a sale to a Mr. Siegfried Hanson of certain of your inventory of petroleum products, and TBA, and equipment?

A. Yes, sir.

Q. Who is Mr. Hanson?

[fol. 1808] A. Mr. Hanson? Who was he?

Q. Maybe I can clarify it and simplify it. Mr. Hanson was your successor as the operator of that station,——

A. That's right.

Q. —is that correct?

A. That's right.

Mr. Paradise: May I have this marked for identification, please?

The Clerk: Defendant's Exhibit G, marked for identification.

(The document referred to was marked Defendant's Exhibit G, for identification.)

By Mr. Paradise:

Q. Mr. Lenton, I will show you Defendant's Exhibit G, for identification, the first page of which is entitled "Stock Inventory," the second page of which bears the title "TBA and Service Items," the third and fourth pages bearing that same title, and the fifth and sixth pages of which bear the title "Equipment Inventory," and ask you if this is your signature.

A. This (indicating)? Yes, sir.
Q. On the last page?
A. Yes, sir.
Q. What does that instrument represent, Mr. Lenton?
A. What does what?
Q. How was this used? Do you recall the circumstances [fol. 1809] under which you signed that?
A. You mean, what is it the sale of?
Q. Yes.
A. The sale of all of this?
Q. Yes.
A. Why, sure, I sold it to him.
Q. This covers the items which were sold by you to Mr. Hanson——
A. That's right.
Q. —that we have just been talking about?
A. That's right.
Q. Now, calling your attention to the last two pages, both of which are entitled, "Equipment Inventory," there are several columns there, the first column bears the title, "Item," the second "Price," the third, "Depreciation," and the fourth, "Extension." Do you have any knowledge of how these depreciation items were figured at the time this schedule was made up?
A. No, I don't.
Q. You didn't participate in that?
A. No, sir.

Mr. Paradise: I see. That is all.
The Court: Any redirect?
Mr. Greer: Yes, your Honor.
Mr. Paradise: May we offer this in evidence?
[fol. 1810] The Court: It may be received.
The Clerk: Defendant's Exhibit G in evidence.

(The document, heretofore marked Defendant's Exhibit G, for identification, was received in evidence.

The Court: How did your successor come to your place?
The Witness: Well, he was looking for a station, and somebody sent him, I don't know who it was, and he came up to see me.

The Court: None of the Richfield merchandisers called you?

The Witness: No, they didn't. I had to call the Richfield merchandiser and tell him I had a buyer.

The Court: All right.

Redirect examination.

By Mr. Greer:

Q. Mr. Lenton, a question was asked you on cross-examination as to whether you ever put any of these products, A-C spark plugs, or Fram filters, or Quaker State oil, on the credit cards, and I will ask you whether or not these items were approved either for credit cards or for your handling in any way?

A. No, absolutely not.

Q. Were you permitted to handle them in any way at all?

A. No, sir.

[fol. 1811] Q. Where did you keep your A-C spark plugs?

A. I had a cabinet on the wall I kept locked up.

Q. Where did you keep your Fram filters?

A. Back of the compressor.

Q. Where did you keep your Quaker State oil?

A. In the back of my car.

Q. In the back of the car?

A. Yes, locked up in the back of the car, in the trunk of the car.

The Court: Some of you boys would have qualified as bootleggers, if it had not been for the fact that Seattle was comparatively a law-abiding city during prohibition.

Are you finished?

Mr. Greer: Yes, sir. We are through.

The Court: This is a good time to take a recess.

(A short recess was taken.)

[fol. 1812] Mr. Greer: I pray the indulgence of the court for just one moment, your Honor. The witness did not come back from recess.

KENNETH MILLER, called as a witness by the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: State your name, please.
The Witness: Kenneth Miller.

Direct examination.

By Mr. Greer:

Q. What is your name, sir?
A. Kenneth Miller.
Q. Where do you live, Mr. Miller?
A. Sherwood, Oregon.
Q. What is your occupation now?
A. Farmer.
Q. Were you ever connected in any way with the defendant Richfield Oil Corporation?
A. Yes, sir.
Q. When were you connected with it?
A. In 1944-1946.
Q. What was the nature of your connection?
A. I was a merchandiser.
Q. Where did you perform your duties then?
A. In the City of Portland.
[fol. 1813] Q. Who instructed you as to the nature of the duties you were to perform when you were first hired by Richfield?
A. Mr. E. J. Bradford.
Q. What was the title of the position that he held?
A. He was the branch manager.
Q. Was he the only branch manager while you were with Richfield?
A. No, sir.
Q. What were the names of the others?
A. There was a Mr. Cresswell.
Q. How long did you work under the supervision of Mr. Bradford?
A. About 18 months.
Q. And did you work the remainder of your tenure with the company with Mr. Cresswell?
A. Yes, sir.
Q. How many stations did you oversee?

A. Approximately 15.

Q. Were they all the type known as leased out stations?

A. Yes, sir.

Q. Where were they in Portland?

A. They were west side stations and a few close in east side in order to make up. The city was divided into three areas and there were not 15 stations on the west side of Portland, so I had the ones on Union Avenue and [fol. 1814] close in on the east side.

Q. Did you have any discussions——

The Court: Sherwood is on the outskirts of Portland?

The Witness: Sherwood is about 17 miles out of Portland.

The Court: In which direction?

The Witness: West.

The Court: In the County of Washington?

The Witness: Washington County.

By Mr. Greer:

Q. Did you have any discussions or conversations with Mr. Bradford about how you were to do your job when you were hired?

A. Yes, sir.

Q. Would you tell the court what the nature of those discussions were?

A. Well, Mr. Bradford—well, the boys, one of the fellows that worked for Richfield, I knew him and I went there to get a job as—to get a service station, and through him I fairly well knew what the duties were due to the fact that he was a merchandiser. But Mr. Bradford gave me further instructions in the respect that he told me what the specific duties were such as TBA program, was fairly well new, but was in force, and that they had him back there to tell us what products were TBA approved products and that we were not to have anything but TBA approved products in the service stations, and that was to be enforced 100 per [fol. 1815] cent, as well as other duties such as cleanliness in the service station, the hours the service station operators were to keep and days of the week that they were to be closed.

Q. Were any instructions given you about oils as well as TBA?

A. Yes, sir. There were not to be any off-brand oils in any service station.

Q. What was an off-brand oil?

A. Anything that was not Richfield oil, except Sinclair which was Richfield Pennsylvania.

Q. Did you have regular meetings with Mr. Bradford?

A. Every morning, sir.

Q. What would be discussed at those meetings?

A. The business of the day. There would be letters from Seattle from Mr. Kirby or Mr. Foster, who was head of the TBA, and perhaps there would be a little—maybe we had a service station that had a little off-brand merchandise that was called to our attention through one source or another, through the TBA distributor or perhaps one of the higher officials had stopped in at his station, or maybe a service station was not quite up to snuff, the lights were not lit or something.

Q. Was it ever called to your attention at one of those meetings that one of those service stations under your [fol. 1816] supervision was handling off-brand products?

A. Yes, sir.

Q. On such occasions what instructions did you receive?

A. I was told that the off-brand merchandise was to be removed from the station.

Q. Did you carry out those instructions?

A. I instructed the man that the off-brand merchandise was to be removed, but in most cases it was not. It was hidden under the counter or tried to be sold through the station.

Q. Did a man named Fred Erz operate one of the leased out stations under your supervision?

A. Yes, sir.

Q. Where was that station?

A. That was on Northeast Union. I can't recall the number. I believe it is 630, however.

Q. Did that operator ever handle any off-brand merchandise?

A. The deal that came up there was not necessarily off-brand merchandise. It was the fact that Fred Erz had a contact with Goodyear Tire & Rubber Co. because of the

vast quantity of merchandise he sold before the TBA program went in effect.

Q. No. Were Goodyear tires an authorized TBA product?

A. Yes, sir.

Q. Were the service station operators under your supervision supposed to buy Goodyear tires to sell to their [fol. 1817] customers?

A. Yes, sir, and they were to buy them from our TBA distributor.

Q. And who was he?

A. Mr. Ed Radke at that time.

Q. Had Mr. Erz been buying Goodyear tires from Mr. Radke?

A. No. He had been buying from Goodyear Tire & Rubber direct.

Q. Had he been buying the same type of tires that were on the TBA program?

A. Identical merchandise.

Q. But he did not buy them from Richfield approved TBA distributor?

A. No, because he had a contract, that is, he had a contact. He could buy them for the same price as our distributor was buying them and it cost him more money to buy from our TBA distributor.

Mr. Paradise: Have you fixed the time of this inquiry, counsel?

By Mr. Greer:

Q. When was this?

A. Early in 1946. Well, it was several times while I was with the company, with both branch managers we had this come up, and we called on Mr. Fred Erz, both Mr. [fol. 1818] Bradford and myself, and Mr. Cresswell and myself, and he was told that he had to play ball with us or else he knew, and he played ball with us, at least enough to satisfy the company.

Q. Could he purchase Goodyear tires cheaper through his own sources than he could through the TBA program?

A. Yes, sir.

Q. You and Mr. Bradford called on him?

A. Yes.

Q. And did he subsequently comply with the TBA program?

A. He did enough to satisfy, I believe, Mr. Bradford and Mr. Cresswell, both, at a later date.

Q. Did you have an operator by the name of Ray Giles?

A. Yes, sir.

Q. Where was his station at that time?

A. It was on Northeast Seventh, just off of Belmont Street.

Q. Was that a leased out station?

A. Yes, sir.

Q. Was any difficulty experienced with Mr. Giles with reference to handling off-brand products?

A. Yes, sir.

Q. What was that difficulty?

A. Off-brand tires, off-brand accessories, off-brand oil.

Q. Where did Mr. Giles purchase his tires and batteries?

[fol. 1819] A. I couldn't say where he purchased them, but he had a contact similar to what Fred Erz did, although his tires were not Richfield approved tires that he would buy, nor Richfield approved batteries nor accessories nor Richfield approved oil.

Q. Were any instructions given to you about the future handling of off-brand merchandise at that station?

A. Yes, sir.

Q. What were those instructions?

A. That he had to buy his tires and batteries and accessories from Mr. Ed Radke, and that there was not to be any off-brand oil. However, I took it on my own shoulders. In that case he had Bradley Pie Co. doing business there and he had all of their gasoline business as well as lubrication.

Q. Did they have a fleet of trucks, panel trucks?

A. He had two fleets of trucks. I can't recall the other fleet. Neither one of them wanted Richfield's oils. One of them used Quaker State and the other one MacMillan Ring-Free Oil. And I gave him more or less a go-ahead on my own, rather than lose the account for gasoline and lubrication, to contact the Bradley Pie Company and ask them to buy the oil, leave it set in the back room, and it

was not to be sold to any other cars that came into the station. That was on my own. That was not company approved.

[fol. 1820] Mr. Greer: That is all, your witness.

The Court: All right, Mr. DeMartini.

Cross-examination.

By Mr. DeMartini:

Q. As a merchandiser, Mr. Miller, you dealt only with L-O forms, is that correct?

A. Yes, sir.

Q. You had nothing to do with the dealer to whom Richfield sold products under the sales contracts 3-C?

A. None whatsoever.

Q. Or the 337 contract?

A. I am not familiar with any of those contracts.

Q. Mr. Erz and Mr. Giles were both L-O operatores, were they not?

A. Yes, sir.

Q. With reference to Bradley, speaking of Mr. Giles, you said that the account would be lost if it were not given the privilege or the opportunity, rather, of buying Pennzoil or Quaker State oil?

A. Yes, sir.

Q. What account are you referring to?

A. To the Bradley Pie Company of Portland, sir.

Q. And they were an account of his?

A. Of Ray Giles, carried on the books, yes, sir.

Q. And you then took it upon yourself to give him [fol. 1821] consent to buy those?

A. Yes, sir, merely to the disadvantage of our gallonage at that station had we lost the oil account.

Q. In other words, if it were not with your consent, he could not have purchased it?

A. No, sir. In other words, the company policy would have been to throw the man out the window.

Mr. DeMartini: That is all.

Mr. Greer: Stand aside.

Mr. Somerville: The Government calls as its next witness James Moore.

JAMES MOORE, called as a witness by the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: What is your name?

The Witness: James Moore.

Mr. Somerville: Counsel, would you furnish me with the documents called for under the second subpoena, part 1?

Mr. Paradise: Yes, we have all the contracts. Do you want them in any particular order, any order of date?

Mr. Somerville: May I examine them, if you please?

Direct examination.

By Mr. Somerville:

Q. What is your name, sir?

A. James Moore.

Q. And where is your residence, Mr. Moore?

[fol. 1822] A. Medford, Oregon.

Q. What business are you in?

A. I am branch manager for Sherwin-Williams paints.

Q. Do you operate a station handling Richfield brands of gasoline?

A. Yes, sir.

Q. Where is that station located, sir?

A. 56 North Riverside, Medford.

Q. Medford, Oregon?

A. Oregon.

Q. Could you tell us approximately when you began operating the service station there?

A. In August, 1943.

Q. August, 1943. Could you tell us who did you contact with respect to this particular station, who in Richfield?

A. Their distributor.

Q. What was his name?

A. George Field.

Q. I hand you a contract entitled "3-C Operator's Sales Contract, Form 783, Print Date 9-45," I think it is. Can you see that?

A. It looks like it.

Q. Between Richfield Oil Corporation as seller and James Moore as buyer, and a document entitled "3-C Operator's Lease, Form 668, Print Date 11-45" dated December 7, 1945,

[fol. 1823] and ask you if those were the agreements that you entered into?

A. That is right.

Mr. Somerville: May it be stipulated, counsel, that the 3-C operator's lease produced by you is the same as Government's Exhibit 4-A, it is written on the same form, and that the term specified therein commences the first day of October 1945 and ends the 30th day of March, 1951?

Mr. Paradise: What is the print date of the form, Mr. Somerville?

Mr. Somerville: The print date is 11-45.

Mr. Paradise: I understand that that is the same as Government's Exhibit 4-A. That is also attached as Defendant's Exhibit A.

Mr. Somerville: And that in paragraph 11 it is specified that "this lease is subject to all the terms, provisions, and conditions contained in that certain lease dated the 7th day of December, 1945, by and between George W. Field, as lessor, and Richfield Oil Corporation, as lessee." Is that so stipulated?

Mr. Paradise: All right. Are you reading from the lease?

Mr. Somerville: Yes.

Mr. Paradise: If you are, I will stipulate it, yes.

Mr. Somerville: And that the 3-C operator's sales contract on form 783—the print date there is a little illegible—[fol. 1824] form 783 is the same as Government's Exhibit 4-B?

Mr. Paradise: If this is the same print date, which I can't read, I will agree that it was on the same form.

Mr. Somerville: And that said contract specifies that the terms shall be October 1st, 1945 to March 30, 1951, and specifying that the seller shall sell and buyer shall buy buyer's entire requirements, and under "minimum quantity"—gallons, 10,000 gallons, lubricating oils 350 gallons, and greases 175 pounds.

Mr. Paradise: Yes, if that is what the agreement says.

[fol. 1825] Mr. Somerville: And at the bottom of this contract is typewritten in the following:

> "In the event of any termination of that certain Operator's Lease executed concurrently herewith by

and between the parties hereto this Operator's Sales Contract shall automatically terminate without notice or action on the part of either party hereto."

Mr. Paradise: I will stipulate that was typed on the form as an additional provision, yes.

By Mr. Somerville:

Q. Mr. Moore, with reference to these particular agreements, do you know who owned this property?

A. Yes, Mr. Merrick.

Q. Do you know, of your own knowledge, whether Mr. Merrick leased to any other party?

A. He leased to Mr. Field.

Q. And this 3-C operator's lease is subject to that lease between Richfield and Mr. Field?

A. That's right.

Q. Who was Mr. Field, with reference to his position or his capacity as an agent or representative of the Richfield Oil Corporation?

A. He was local distributor at that time.

Q. Was he a bulk plant man?

[fol. 1826] A. I don't know whether you call it bulk plant or not, but he was the man I did business with, as a commission agent, I presume.

Q. Whom did you talk with, or who negotiated these papers with you?

A. Mr. Field.

Mr. Paradise: Which papers?

Mr. Somerville: These 3-C operator's sales contract and the 3-C operator's lease.

Mr. Paradise: Are you talking about the one dated in 1945?

Mr. Somerville: Dated in 1945, yes, sir.

The Witness: Mr. Field.

By Mr. Somerville:

Q. What was your arrangement with Mr. Field concerning entering into these agreements?

Mr. Paradise: I submit that calls for the conclusion of the witness, and is ambiguous.

Mr. Somerville: I will reframe my question, counsel.

By Mr. Somerville:

Q. In connection with these contracts, was anything said at the time that you entered into the station under these contracts with reference to the products which you should handle or sell?

A. No.

Q. Was anything said subsequently with respect to your handling TBA products?

[fol. 1827] A. Not at that time.

Q. At any later date were there any discussions with any representative of the Richfield Oil Corporation concerning any TBA program or your handling of TBA products?

A. Later on, yes.

Q. When did that occur?

A. Oh, about the early part, probably, of 1946.

Q. The early part of 1946?

A. Maybe a little later. I don't recall exactly.

Q. By "TBA" you mean tires, batteries, and accessories sold in the service station?

A. That's right.

Q. To whom did you talk at that time concerning the TBA items?

A. Mr. Lalande.

Q. And who is Mr. Lalande?

A. I believe he had the title of merchandising man, or something.

Q. He was a Richfield representative?

A. A Richfield employee.

Q. What did Mr. Lalande say concerning TBA products?

A. Well, he suggested that we handle TBA products there, and inasmuch as my connections were better on the different brands, I told him I could not go along with it.

Q. Did he say anything with respect to what products [fol. 1828] were authorized by Richfield?

A. Oh, yes. I went to one of their promotional meetings at which their approved products were discussed.

Q. Was anything said at that time with respect to the petroleum products that you would handle or not handle?

A. You mean at the time the lease was signed,—that these papers were signed?

Q. Well, was there any such discussion at the time the lease was signed?

A. No, not at that time, no, sir.

Q. Were there such discussions later on?

A. Yes.

Q. When did they occur?

A. Probably, about the middle of 1946, I had some signs advertising Quaker State oil and MacMillan oil, and we were asked to take those down, which we did. Later on we were asked to discontinue——

Q. Pardon me just a moment. I don't think you specified who told you to take those signs down.

A. Mr. Field asked us to take them down, and he was in company with a Richfield man, I don't recall his name.

Q. Could it have been Mr. Lalande?

A. No, it was not.

Q. At that time what signs did you have up? What signs were you referring to?

[fol. 1829] A. We had a Quaker State and a MacMillan oil sign.

Q. Was anything said at that time concerning your handling of those oils?

A. Well, it was suggested that we should confine our efforts to Richfield products.

Q. Were you told to discontinue handling any brands of oil?

A. Yes, we were asked to discontinue handling Hy-Vis.

Q. Did you desire to handle Hy-Vis?

A. Yes, sir, because it was financially a better deal. It cost us less money.

Q. Was that oil sold in bulk or in cans?

A. We had it in bulk.

Q. Subsequent to those discussions, did you remove the signs that were objected to?

A. We did.

Q. Did you dispose of the Hy-Vis oil?

A. We did.

Q. Did you continue to handle any Quaker State oil?

A. Yes, we did.

Q. Did you display that oil?

A. Not out in front. We have it in our oil room.

Q. Did you notice any depreciation in the amount of your sales of Quaker State oil?

A. Well, whether taking the sign down had anything to [fol. 1830] do with it or not, I know we are buying less of it.

Q. What has your gallonage been at this station? First, what was the gallonage at the time you took over this station?

A. Well, that was during the war, so the gallonage would be affected, of course, by the rationing which was in effect at the time. It was running approximately 100,000 gallons a year at that time.

Q. Could you trace the history of your gallonage from then on?

A. It gradually started to show an improvement even then, and we built it up to a maximum of about 234,000 a year in 1948.

Q. What were your sales of Richfield lubricating oils? What would they average?

A. Oh, they run—I don't know by the gallon, but they run between 400 and 500 dollars a month for oil.

Q. What was your rental? How much rent did you pay?

A. From 1945 on we paid half a cent a gallon.

Q. Do you happen to know whether Mr. Field has a 3-C service station lease?

A. I have never seen his lease. I don't know what he has.

Mr. Somerville: Counsel, could you produce the 3-C service station lease between Mr. Field and Richfield?

[fol. 1831] Mr. Paradise: It is not in this file, Mr. Somerville. I will undertake to see if I can get it for you. It may be in the Northern Division office, however. I don't know. I haven't ascertained.

By Mr. Somerville:

Q. You do know, however, that Mr. Field leased the property to Richfield?

A. Yes, he told me so.

Q. Now, was there anything said during the whole period of your operation under this particular contract that you have referred to as to your handling any other gasoline or lubricating oil?

A. Well, except as I have stated, we were requested to discontinue Hy-Vis.

Q. Now, I hand you a document with the title "3-C. Operator's Sales Contract" on Form 783, with print date of 8-48, dated February 10, 1950, and ask you if you executed that contract.

A. Yes, that's my signature.

Q. I show you a document designated, "3-C. Operator's Lease," on Form 668, print date 9-48, dated February 10, 1950, and ask you if you executed that lease.

A. That's my signature.

Q. Would you tell the court what the minimum and maximum gallonage is that is specifield as to the various products thereon?

[fol. 1832] A. The minimum on gasolines is 12,219 gallons, on Richfield oils, 367, and on greases 183 pounds. The maximum gasoline is 14,663 gallons, lubricating oils, 440 gallons, and greases 220 pounds.

Q. Now, at the time this contract was renegotiated, had your former 3-C operator's sales contract and 3-C operator's lease expired?

A. No.

Q. Did you approach anyone with respect to changing the form?

A. No.

Q. Who approached you?

A. Richfield's representative, Mr. Froman.

Q. Mr. Froman. Do you know what his position was?

A. He is still with them as a representative, calling on dealers. I don't know what the official title is.

Q. Did he explain why he wanted you to execute this new form?

A. No, he didn't.

Q. At that time did he say anything concerning the signs on the premises, or did he say anything that would permit you to put up competitive signs?

A. It wasn't discussed.

[fol. 1833] Q. Did he say anything with respect to whether you could handle other brands of gasoline, lubricating oils or greases?

A. It wasn't discussed.

Q. And you signed the documents after this discussion?

A. I delayed signing if for some time, and was called on so much that I signed the thing more as an accommodation than anything else.

Mr. Paradise: I didn't hear the last part of the answer.

The Witness: I said I signed it more as an accommodation to Mr. Froman than anything else.

Mr. Paradise: I would like to hear the first part, please.

(Answer read.)

Mr. Somerville: To shorten the record, counsel, may it also be stipulated that the 3-C Operator's lease referred to there is the same as Government's Exhibit 4-D, and the 3-C Operator's Sales Contract is the same as Government's Exhibit 4-C?

Mr. Paradise: Yes, so stipulated.

Mr. Somerville: And, further, that the 3-C Operator's Sales Contract contains an additional provision, as follows:

> "In the event of any termination of that certain Operator's Lease executed concurrently herewith by and between the parties hereto this Operator's Sales [fol. 1834] Contract shall automatically terminate without notice or action on the part of either party hereto."

Mr. Paradise: Yes, so stipulated.

Mr. Somerville: And that these papers refer to the same service station as the former service station.

Mr. Paradise: Yes, so stipulated.

Mr. Somerville: And these are the new contracts that this man entered into after the original ones we have already referred to?

Mr. Paradise: Those are the contracts that were entered into in 1950. Is that correct?

Mr. Somerville: Yes, February 10, 1950.

By Mr. Somerville:

Q. Thereafter, after executing these new agreements, did you display any competitive signs?

A. I haven't.

Q. Thereafter, did you purchase Hy-Vis oil?

A. No, not after that.

Q. Did you desire to purchase Hy-Vis oil?

A. Yes.

Q. Did you feel free to do so?

A. No.

The Court: Whose brand is Hy-Vis oil?

The Witness: I believe it is made by the Sinclair Refining Company.

[fol. 1835] The Court: I see.

Mr. Paradise: I move to strike the witness' last answer.

The Court: Which?

Mr. Paradise: To the question, "Did you feel free to do so?" as being without foundation.

The Court: I would have sustained it.

Mr. Paradise: Forgive me, your Honor.

The Court: I don't think you were here when we had Judge Monroe in the Superior Court, were you?

Mr. Paradise: I know of him.

The Court: He would say, when an objection wasn't forthcoming, "The objection that should have been made is sustained."

By Mr. Somerville:

Q. You still operate this station, Mr. Moore?

A. Yes.

Q. I am interested in knowing—how much of an investment did you have in this station?

A. In merchandise, you mean?

Q. Well, of anything. What did you have invested in the station?

A. In merchandise and equipment probably about 13 or 14 thousand dollars.

Q. How many men do you employ?

A. An average of five.

[fol. 1836] Q. What hours is the station open?

A. From 6:30 until 9:00 on weekdays, and 10:00 to 5:00 on Sundays.

Q. Are you still operating under a 3-C Operator's Sales Contract, dated February 10, 1950, and the 3-C Operator's Lease of the same date?

A. No, that expired the 31st of March, 1951.

Q. I show you a sales contract on Form 337, print date 8-48, dated January 25, 1951, between Richfield Oil Corporation, the seller, and James F. Moore, as buyer, and ask you if that is the new contract that you executed.

A. That's my signature.

The Court: Let me see it.

(The document was handed to the court.)

The Court: Go ahead.

By Mr. Somerville:

Q. On the same date did you execute a painting agreement on Form 59, print date 5-47, dated January 25, 1951?

A. I did. That's my signature.

Q. Would you tell the court what the provision was for painting the station? Was there something?

A. Well, the station needed painting very badly, and we had been discussing it for some time. As a matter of fact, it was overdue. We had a dispute about some rent, due to repairs that I had made and paid for—had made and paid [fol. 1837] for. The oil company agreed to cancel what they called the delinquent rent, and which I called repairs, if I would sign this painting agreement and sales contract.

Q. What did those repairs consist of?

A. Roof repairs, pump repairs, plumbing repairs, some electrical repairs.

Q. What reason did you have for not paying them?

A. At the time Mr. Field left the Richfield Oil Company as distributor and a new distributor came in, I had a discussion with Mr. Hans, a Richfield Oil Company man, who at that time was some sort of a manager in Portland, and because he knew that the basic lease calls for Mr. Field to do the repair work, and because he was handling another brand of—distributing another brand of petroleum products, I felt he would not be particularly interested in knowing or

in maintaining property that was in competition with the brands of gasoline that he was handling. So I asked Mr. Hans who was going to take care of the repairs, because I was in the middle. Why, he said that they would be glad to do anything within reason. Unfortunately, some time later Mr. Hans passed away, and I held up payment of the rent in order to get some action out of the repair bills that I had put out.

Q. Now, at the time these new agreements were entered into, who owned the property?

A. Mr. Merrick still owns the property.

[fol. 1838] Q. The same owner as before?

A. That's right.

Q. What sort of an arrangement do you have for the occupancy of the premises?

A. On a 30-day basis.

Q. From whom?

A. From Mr. Field and Mr. Merrick, as a mutual agreement.

Q. So you have a 30-day arrangement with Mr. Field?

A. Yes.

Q. Now, calling your attention, Mr. Moore, to paragraph 1 of this painting agreement, I will ask you if you are familiar with the terms of that agreement, and with that paragraph.

A. Well, I haven't read it, so whatever is in it would be new to me.

[fol. 1839] Q. Would you read it?

A. Paragraph 1: "That dealer shall remove from the"—

The Court: No, no. Do not read it.

The Witness: All right. Let him read it.

The Court: You do not want the witness to read that contract. If you want to base a question on the statement, why, you read the statement.

By Mr. Somerville:

Q. Concerning your operations after the execution of these agreements, Mr. Moore, have you displayed any competitive signs since executing this new painting agreement?

A. No.

Q. Do you feel free to do so?

Mr. Paradise: I will object to that question as immaterial.
The Court: I think that calls for a conclusion.

By Mr. Somerville:

Q. Have you continued to purchase Hy-Vis oil? I mean have you resumed purchasing Hy-Vis oil?
A. No.
Q. Do you actively display any other oils?
A. We still purchase Quaker State and MacMillan.
Q. Do you still conceal it?
A. Well, semi.
Q. What are your reasons for doing that, Mr. Moore?

[fol. 1840] Mr. Paradise: Object to the question as immaterial and calling for a conclusion of the witness.
Mr. Somerville: He must be acting through some sort of a basis.
Mr. Paradise: That is not a proper assumption.

By Mr. Somerville:

Q. What is the basis for your actions?

Mr. Paradise: Objected to as an improper question, it calls for a conclusion, and immaterial.
The Court: It is awfully hard to draw the line, but I think unless there is some discussion or conversation with some representative, in view of the change of conditions of the contract, the question as to reasons goes a little too far.
Mr. Somerville: Very well, your Honor. I will ask another question or two.

Q. At the time you executed these new agreements was anything said about whether or not you could handle other products?
A. It was not discussed.

The Court: Well, has anybody discussed it since?
The Witness: No, sir.

By Mr. Somerville:

Q. So that your operations, as I understand it, since the instructions to remove the Hy-Vis signs and discontinue it have been the same?

[fol. 1841] A. Yes, sir.

Mr. Somerville: That will be all. Oh, one more thing.

The Court: If there is an inference of continuity, it is an inference that should be drawn by the court, not by the witness.

Mr. Somerville: Counsel, would you stipulate that the minimum and maximum figures in the sales contract, form 337, are specified as——

Mr. Paradise: All I can say at this time is that I am going to put these all in evidence.

The Court: I think there is one question that occurs to me now in view of the last question that Mr. Somerville asked, and that is, what is the date of the last discussion about removing signs?

The Witness: Oh, about 1947.

The Court: And what was the last discussion about having other products, non-sponsored products in sight?

The Witness: That has been a long time. We haven't put them in sight so there has been no basis for further discussion.

The Court: Oh, you haven't had any. Have you been informed since that time that the ruling in any respect has been changed?

The Witness: No, sir.

[fol. 1842] The Court: All right.

Cross-examination:

By Mr. Paradise: May I first offer into evidence as Defendant's Exhibit H the two instruments entitled, separately, "3-C Operator's Lease" and "3-C Operator's Sales Contract," dated December 7, 1945 and signed by Mr. Moore and by Richfield.

The Clerk: Is this admitted, your Honor?

The Court: Yes, it may be received.

The Clerk: Defendant's Exhibit H in evidence.

(The document referred to was marked Defendant's Exhibit H and received in evidence.)

Mr. Paradise: Richfield will then offer as Exhibit—I suggest that these three instruments go together as a part of the one exhibit, if you can make a sub-heading.

The Clerk: H and H-1.

Mr. Paradise: I am offering the 3-C Operator's Lease and 3-C Sales Contract, both dated February 10, 1950, signed by Mr. Moore and by Richfield.

The Clerk: Is this admitted, your Honor?

Mr. Somerville: Counsel, the 3-C service station lease as to the third party, between Field and Richfield, is not included. I think, to show the entire arrangement, that you should produce and offer that additional document.

Mr. Paradise: I will be glad to if I can secure it. I do [fol. 1843] not have it in court, Mr. Somerville.

The Clerk: Is this admitted, your Honor?

The Court: It may be received.

The Clerk: That is Defendant's H-1 in evidence.

(The document referred to was marked Defendant's Exhibit H-1 and received in evidence.)

Mr. Paradise: Richfield then offers as Defendant's H-2 a sales contract on form No. 337, dated January 25, 1951 and signed by James Moore and by Richfield.

The Court: It may be received.

The Clerk: Defendant's H-2 in evidence.

(The document referred to was marked Defendant's Exhibit H-2 and received in evidence.)

Mr. Paradise: I next offer as Defendant's Exhibit H-3 a painting agreement on form No. 59, dated January 25, 1951 and signed by Mr. Moore and by Richfield.

The Court: It may be received.

The Clerk: Defendant's H-3 in evidence.

(The document referred to was marked Defendant's Exhibit H-3 and received in evidence.)

By Mr. Paradise:

Q. I understand, Mr. Moore, that you first occupied this property commencing in 1941?

A. 1943.

Q. 1943. Forgive me. Do you know when Mr. George Field first leased the proper- from Mr. Merrick?

[fol. 1844] A. The lease we are operating under now, I believe was in 1941.

Q. Do you know whether or not Mr. Field held that lease for his own account?

A. What do you mean?

Q. Well, that he was the lessee personally, rather than held it in his capacity as distributor for Richfield?

A. I believe it was personal.

Q. Do you know whether he ever received any personal income from owning that leasehold?

A. He told me he has.

Q. On what basis did you sublease this property from Mr. Field in 1943?

A. We just made a verbal agreement of a cent a gallon rent to him.

Q. And you paid that to Mr. Field?

A. That is right.

Q. At that time was Mr. Field a Richfield distributor in Medford, Oregon?

A. That is right.

Q. Did you purchase gasoline from Richfield commencing in 1943?

A. Yes, sir.

Q. And did you continue purchasing gasoline from Richfield from then until 1945, when you entered into this 3-C [fol. 1845] operator's sales contract on December 7, 1945?

A. Yes, sir.

Q. Was that purchase made pursuant to any contract or agreement with Richfield, either oral or written?

A. I hadn't talked to a Richfield man. I dealt with Field.

Q. How did you purchase that gasoline, in what manner?

A. Well, a tank wagon dumped it and billed us and we paid for it.

Q. Prior to the time when you signed this sales contract and operator's lease which is Defendant's Exhibit H were you not informed that Mr. Merrick—let me withdraw that. Did you become on close terms with Mr. Merrick?

A. I have known him a long time.

Q. Pardon me?

A. I have known him a long time.

Q. Is it not a fact, Mr. Moore, that at the time this 3-C operator's sales contract was signed which is Defendant's Exhibit H that Mr. Merrick had informed Mr. Field that Mr. Field would be permitted to lease this property to

Richfield only if Richfield at the same time agreed to sublease it back to you personally?

A. I believe Mr. Merrick's lease to Mr. Field stipulates that he has the right to approve the operators that we put in at the station.

[fol. 1846] Q. Yes.

A. And on that basis it was suggested to Mr. Field that the station be operated by me.

Q. That was suggested by Mr. Merrick to Mr. Field?

A. That is right.

Q. And was it not also suggested by Mr. Merrick to Mr. Field that he would consent to the sublease by Mr. Field to Richfield only if Richfield subleased it back to you for the full five and one-half year period referred to in Defendant's Exhibit H?

A. I was not there at that conversation.

Q. You have knowledge of that fact, however, do you?

A. I was told that that was going to happen but I was not there.

Q. Yes, sir.

The Court: In other words, you knew that your lease would be for a definite term?

The Witness: Oh, the lease, yes, sir.

By Mr. Paradise:

Q. And you also knew that Mr. Field could lease it to Richfield only if Richfield in turn and at the same time leased it back to you?

A. As long as the relations that were existing at that time would remain, yes.

Q. At the time you signed this Defendant's Exhibit H you were aware of the fact that this agreement contained a [fol. 1847] provision in paragraph 1 that Richfield agreed to sell and deliver to you, and you agreed to purchase from Richfield during the period from October 1, 1945 to March 30, 1951 your entire requirements of automotive petroleum products for resale at that particular service station?

A. Yes.

Q. You knew that that was in it?

A. That is right.

Q. Was any reference to that clause made by Mr. Lalande

when he discussed with you—let me withdraw that. I think you mentioned that the discussion of the Quaker State and MacMillan signs was not made by Mr. Lalande?

A. They were not.

Q. Who did tell you that in 1946?

A. Mr. Field.

Q. Mr. Field. At that time did Mr. Field make any reference to the provision of this contract that I have just shown you?

A. Well, he said, "You are not supposed to handle anything else but Richfield products, and if the signs are up, why, it will just mean a lot of explaining."

Q. He did not make any reference to this particular contract, did he?

A. Not directly.

Q. During that time from 1945 and until you signed the [fol. 1848] amendment, this new sales contract in February of 1950 which is Defendant's Exhibit H-1, you have handled so-called competitive tires, batteries and accessories, have you not?

A. Yes, sir.

Q. Are you a tire distributor?

A. Yes, sir.

Q. For what company?

A. United States Rubber Co.

Q. Have you handled at this service station other accessories than those that are on Richfield's list approved for credit card purposes?

A. Yes, sir.

Q. You mentioned in your previous testimony that Mr. Lalande at some time—I think you said in 1946—suggested that you handle TBA approved by Richfield.

A. I discussed it with him. The date was approximately that time, shortly after he came on the territory, whenever that date was.

Q. Mr. Lalande asked you to become a TBA distributor, did he not?

A. He said he would discuss that with me. We never got down to figures.

Q. Oh, I see. Mr. Lalande never told you that you were not supposed or were not expected to limit your TBA at that station to Richfield's approved list, did he?

[fol. 1849] A. It was discussed and I told him that our arrangement was there when I took over the place and we were going to continue on that basis we had previously operated.

Q. In February 10, 1950, when the second group of contracts were signed which constitute Defendant's Exhibit H-1, what was your gallonage of gasoline at the station?

A. It runs approximately 200,000 a year.

Q. Is it constant throughout the year, Mr. Moore?

A. With a slight seasonable variation due to weather, which we do have, but generally quite constant.

Q. By my rough calculations, that would be something around 18,000 gallons per month. Is that about right?

A. Approximately, yes.

Q. Was that the gallonage at the time this contract dated February 10, 1950 was presented to you?

A. Approximately, yes.

Q. With whom did you say you discussed this contract?

A. Froman, I believe his name is.

Q. Was there any discussion between you and Mr. Froman pertaining to the minimum or maximum quantities that are referred to in this contract?

A. There was some. I don't recall exactly. I asked him why, and he didn't know, so we let it go at that.

Q. You asked him why what?

A. Why there was a maximum put on the amount of [fol. 1850] gasoline that could be purchased under this contract.

Q. Did you discuss whether or not the figures stated in this contract, which are 12,000 gallons—12,219 gallons as a minimum and 14,663 gallons as a maximum—did you discuss with Mr. Froman whether those figures were either too high or too low?

A. I insisted they were too low.

Q. You wanted the figures raised?

A. Yes, sir.

Q. And you so told him?

A. Yes.

Q. And what was his response?

A. Oh, he says, "Let us get this out of our hair. We will take care of it. Your contract will be up pretty quick and we will have to sign a new one."

The Court: Did you ever run above the maximum and have difficulty in having it supplied?

The Witness: Not yet.

The Court: All right. So that it is merely abstract, ultimately. If they gave you more, you would buy more, wouldn't you?

The Witness: That is right, sir.

The Court: Except in a shortness they might want to cut you down.

The Witness: That is problematical.

[fol. 1851] By Mr. Paradise:

Q. Your purchases under this contract dated February 10, 1951, have exceeded the maximum, have they not?

A. February 10th, 1950, yes, sir.

Q. They were in excess of this maximum quantity which is here stated at 14,663?

A. Yes, sir.

Q. Now, what relation do the quantities of lubicating oil that are specified in this contract bear to the quantities which you were purchasing and selling at the station at the time this contract was made? And, to refresh your recollection, the contract provides that the minimum quantity of lubricating oil is 367 gallons and the maximum quantity is 440 gallons.

A. We did not discuss lubricating oils and greases to any extent because the gallonage figures or records were not kept by me, and my discussion related almost entirely to gasoline.

Q. Is it not correct that the quantity of lubricating oil that you were purchasing and selling at the station at that time was substantially in excess of the minimum figure of 367 gallons per month?

A. I don't know. If we had between $450 and $500 a month, why, that would be about those figures.

Q. I call your attention, Mr. Moore, to a clause that appears in the sales contract dated February 10, 1950 imme-[fol. 1852] diately following the statement of quantities,

these figures that I have read to you, and I would like to read this to you:

> "The above quantities represent those to be purchased and sold under normal business conditions, and in the event because of climatic or other conditions buyer's sales are abnormally less during certain periods of the year, the aforesaid quantities will be proportionately reduced"——

I must apoligize, your Honor, because there is a rubber stamp over this and one of the words is hard to read.

> "reduced for said months, based upon previous business experience of Buyer's station or of business generally in the vicinity in the event that Buyer's station has had no previous business experience."

Was that clause discussed between you and Mr. Froman?

A. No, sir.

Q. Was there any mention of climatic conditions made by you to Mr. Froman or the fact that your business was seasonal?

A. I don't recall having done so.

Q. Now calling your attention to the sales contract form 337, dated January 25, 1951, which is Defendant's Exhibit H-2, the term provided in this contract is April 1, 1951 and extends to March 31, 1953, is that correct?

A. Yes, that is what I signed.

[fol. 1853] Q. It also contains a provision that, and I am referring to paragraph 2, this contract also contains a provision that the term is, "Subject, however, to termination by either party at any time during the term hereof by means of a thirty-day notice in writing to the other party."

Did you have any discussion with Mr. Froman concerning that provision at the time you signed this contract?

A. Yes, sir.

Q. What was your discussion?

A. I felt it would be to our mutual advantage to have something like that in the contract.

The Court: Is that a typed clause, or is that the regular printed form?

Mr. Paradise: It is a regular printed clause, your Honor.
The Court: The thirty-day clause?
Mr. Paradise: Yes, the thirty-day clause is printed.
The Court: Printed, all right.

By Mr. Paradise:

Q. Now, the commencement date of this contract, April 1, 1951, coincided with the expiration of the original lease from George Field, as lessor, to Richfield, as lessee; isn't that correct?

A. I have never seen his lease, so I don't know.

Q. Well, put it this way: The commencement date of April 1, 1951 coincided with the expiration of the sublease [fol. 1854] from Richfield to you——

A. That's right.

Q. —under the 1950 contract?

A. Yes.

Q. And commencing on April 1, 1951, is it not correct that you are leasing that property directly from Mr. Field?

A. Yes.

Q. And not from Richfield?

A. And not from Richfield.

Q. Now, calling your attention to the quantities specified in the sales contract of January 25, 1951, which is Defendant's Exhibit H-2, I note that the quantities of gasoline have been changed in this respect: the minimum is now stated at 12,538 gallons and the maximum is stated at 18,000 gallons. Did you have any discussion with Mr. Froman concerning those figures?

A. Yes, sir.

Q. What was that discussion?

A. The original painting and sales contract, as presented to us, called for considerably less gallons as a maximum, and I couldn't see anything in going along with that contract.

Q. So the increase in the maximum figure was at your request?

A. Yes, sir.

[fol. 1855] Q. At the time this contract of January 25, 1951 was signed, what was the volume of gasoline at your station?

A. It is running constant.

Q. Around 18,000 a month?

A. Yes, sir.

Q. Calling your attention to the quantities of lubricating oil that are specified, can you state whether the quantities of lubricating oil, the minimum quantity of 125 gallons which is specified in this contract,—how that compares with your current purchases and sales of lubricating oil?

A. That is considerably less than we are purchasing at the present time.

Q. The figures which have been inserted in these respective contracts refer to quantities per month, do they not?

A. Yes, sir.

Q. Now, with reference to the matter of that rental dispute that you testified to, it is correct, is it not, that there was litigation between Richfield and you concerning that rent?

A. Yes, we had some correspondence about it.

Q. Did it progress to the point of litigation? Did Richfield file a law suit against you?

A. I don't believe they actually brought suit, other than [fol. 1856] a threat to do so, and a notification of the suit.

Q. Now, is it not correct that the matter was compromised in connection with the painting of the station?

A. It was compromised to the extent that if I signed the paint and sales agreement by a certain date, that suit would not be started.

The Court: That is a compromise.

By Mr. Paradise:

Q. That sounds like a compromise in a fashion, Mr. Moore. Were you agreeable to signing this paint agreement?

A. As the best I could do at the time.

Q. Were you also agreeable to signing the sales contract?

A. As the best I could do at the time.

Q. Were you forced to sign them?

A. You don't force a man to do anything.

Q. The other contracts were due to expire, were they not? I mean, your last preceding contracts were due to expire, were they not, on March 30, 1951?

A. That's right.

Q. At the time the paint and sales agreement, dated January 25, 1951, were signed, or at a time prior to that time, had you negotiated with any other oil company or potential supplier of gasoline?

A. I have not done so.

[fol. 1857] Q. You did not do so?

A. No, sir.

Q. Had you been solicited by any other oil company?

A. Indirectly.

Q. Were you interested in securing a source of supply from a different company?

A. Not for the present.

Q. Therefore, you were entirely willing to make a sales contract with Richfield, to continue Richfield as a source of supply?

A. On the basis of $280.

Q. On the basis of these exhibits?

A. On the basis of $280 savings. That was quite an influential part of it.

Mr. Paradise: I see. I have no further questions.

The Court: Any redirect?

Mr. Somerville: Yes, your Honor.

The Court: Make it brief. We want to quit. For a change I want to let Mr. Childress actually leave at 5:00 o'clock, so he will have it in the book.

Mr. Somerville: I have just a couple of questions, your Honor.

[fol. 1858] Redirect examination.

By Mr. Somerville:

Q. Mr. Moore, you testified concerning the 30-day termination clause in the sales contract. Why was it to your mutual advantage to have a 30-day termination clause?

A. My experience based on a long period contract was that wasn't too good.

Q. Wasn't there some particular reason here? Who owned the property?

A. Mr. Merrick owned the property.

Q. And you weren't leasing the property from Mr. Merrick?

A. No, not yet.

Q. But you had a verbal arrangement?

A. I have a verbal arrangement whereby at such time as we can get together I will get the direct lease.

Q. Do you know whether Mr. Field had any lease at that time?

A. His lease, under which we are now operating, called for a 30-day extension from month to month until a new lease would be negotiated.

Q. Mr. Field's lease was on a 30-day basis?

A. That's right.

Q. And yours also had to be on a 30-day basis?

A. That's right.

[fol. 1859] Q. Who finally determined the minimum and maximum quantities specified in your contract, both the second 3-C sales contract, and then subsequently the sales contract?

Mr. Paradise: I object to that.

The Witness: I don't get the question.

Mr. Paradise: Your Honor, that has been asked and answered. He testified he objected to the amounts inserted, and they were changed.

The Court: I think that has been gone into. I will sustain the objection.

Mr. Somerville: That will be all.

Mr. Paradise: At the risk of taking advantage of Mr. Childress, may I ask one question to clear up the record?

The Court: Yes.

Recross-examination.

By Mr. Paradise:

Q. Mr. Moore, when did Mr. Field cease being a Richfield distributor?

A. I don't know that date.

Q. Well, it is several years ago, is it not?

A. Yes, sir.

Q. And since that time he has still continued in his capacity as a lessee from Mr. Merrick?

[fols. 1860-1863] A. Yes, sir.

Mr. Paradise: Thank you. That is all.
The Court: All right. Anything else?

(No response.)

The Court: Step down.
The Witness: Thank you, sir.

(Witness excused.)

The Court: Now, gentlemen, we will take our usual recess until tomorrow morning.

(Whereupon, at 5:00 o'clock p. m., Tuesday, May 15, 1951, an adjournment was taken until 10:00 o'clock a. m., Wednesday, May 16, 1951.)

[fol. 1864] Wednesday, May 16, 1951, 10:00 A. M.

The Court: All right, gentlemen.
Mr. Paradise: If the court please, I was asked yesterday by the Government to produce a lease from Mr. George Field to Richfield Oil Corporation which is dated December 7, 1945. Inasmuch as that pertains to the testimony of Mr. James Moore, may I ask that it have a related exhibit number? I suggest H-4 and offer it into evidence.
The Court: All right.
The Clerk: Defendant's Exhibit H-4 in evidence.

(The document referred to was marked Defendant's Exhibit H-4 and received in evidence.)

Mr. Paradise: There is no objection, is there?
Mr. Dixon: No objection.
Mr. Paradise: On the ground that this is a photostat of the original?
Mr. Dixon: No, no, no objection.
Mr. Paradise: May I ask leave of the court at sometime, at the court's convenience, to withdraw some of our exhibits and substitute photostats in lieu of the originals?
The Court: Oh, yes, it may be done.
Mr. Somerville: The Government calls as its next witness E. J. Bradford.

[fol. 1865] ELGIE J. BRADFORD, called as a witness by the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: What is your name, please?
The Witness: Bradford, Elgie J.

Direct examination.

By Mr. Somerville:

Q. What is your name, sir?
A. Bradford, E. J. Bradford.
Q. And where do you reside?
A. Medford, Oregon.
Q. And what business are you in at the present time Mr. Bradford?
A. I am a real estate broker.
Q. Have you ever been employed by Richfield Oil Corporation?
A. Yes, sir.
Q. In what capacity, chronologically?
A. Well, various capacities. Starting from 1930 I was employed by the Pan-American Petroleum Co.

Mr. DeMartini: May I ask that the testimony be limited to the commencement of this present corporation, the defendant in this action?
The Court: All right. However, in his relationships as before he may state generally.

[fol. 1866] A. I don't know the exact date then of Richfield's commencement, but I left the employ in December of 1947.

By Mr. Somerville:

Q. Calling your attention to the period about 1937 what was your position at that time?
A. In 1937. Well, I was district supervisor in eastern Oregon and Washington and Idaho. That was just about the time I left there and went in to Portland, in '37. I don't know the exact month, but sometime in the middle of the summer.

Mr. Paradise: Would you speak a little louder, please, Mr. Bradford?

The Witness: Yes, sir.

By Mr. Somerville:

Q. Would you state just briefly, generally, what your duties were as district supervisor?

A. Well, I was "Mr. Richfield Oil Corporation" you might say, the only salaried man in that whole district, and I was working with and supervising commission agents.

Q. You are referring to the commission bulk plant agents, are you?

A. That is right.

Q. At that time did you have any supervision over service station outlets?

A. Yes, through the agents.

Q. Through the agents. The agents were under your direct supervision?

A. That is right.

[fol. 1867] Q. And what area was that in?

A. Well, it took in from about 35 miles of Spokane to Bonneville, to possibly 50 miles of Klamath Falls, all the country east of there, would be eastern Oregon, Washington, and the entire state of Idaho.

Q. Are you familiar, Mr. Bradford, with the different types of papers involved in connection with Richfield's relationships to service station operators?

A. I am, yes.

Q. You know what we mean when we refer to a leased out station?

A. Yes.

Q. And you know what we mean when we refer to a 2-B type of station?

A. Yes.

Q. And a 3-C type of station?

A. Yes.

Q. And a paint and sales type of station?

A. Yes.

Q. During the period that you were district supervisor did you have stations of all of these categories in your supervision?

A. We had all but the 3-C. That was originated later to replace the 2-B.

Q. In your instructions to the commission bulk plant [fol. 1868] agents was there anything said about whether these certain stations were to be on a 100 per cent basis insofar as the petroleum products were concerned?

A. Well, that was the entire effort, yes.

Q. And were you carrying out instructions from your superiors?

A. I was.

Q. Did you receive those instructions in bulletins or——

A. Ordinarily they came out in a division manager's bulletin, serially numbered, and oftentimes we would be called in to Seattle for some special policy change or other. We would all be called in and each district supervisor would bring his own agents in, commission agents, and we might be there for two or three days getting first-hand in these meetings.

[fol. 1869] Q. Did you make any effort to see that—first of all, were there any split pump accounts in your territory?

Mr. DeMartini: May I ask what time you are referring to now, Mr. Somerville?

By Mr. Somerville:

Q. What was the period, Mr. Bradford? Will you explain the period that you were acting as district supervisor in charge of these bulk plant agents in this area?

Mr. Paradise: That isn't the question. The question is what time did he testify to as to this practice and policy?

The Witness: Do you mean, when we would go to Seattle to a meeting?

By Mr. Somerville:

Q. Yes.

A. Oh, I imagine we were in Seattle possibly three or four times a year. I might be in Boise and get a wire to be in Seattle three days later with my commission agents, but so far as the times and dates, I wouldn't know that.

Q. Would that be in 1937, sir?

A. Up until the time I left, yes.

Q. Did you have any split pump accounts in your area?

A. No, they were pretty well cleaned up. I went over there in 1935 from Hollywood and, as I recall, the split pump accounts were pretty well cleaned up. I don't recall having any experience with them. They had some in the [fol. 1870] branches, that I know of, but not in my territory. I think there was in Baker, to the best of my recollection, there was one grocery had a pump of Richfield and the other one was a pump of Shell, but outside of that I don't recall any split pump accounts.

Q. Do you have any knowledge of what happened to that particular station?

A. Well, I don't know. It was there when I left. It either went 100 per cent Richfield, or they pulled out of the station. I don't know.

Mr. DeMartini: I move that that be stricken as not responsive.

The Court: It is responsive, but it is not material. Objection sustained.

By Mr. Somerville:

Q. Now, subsequent to your capacity as district supervisor, what position did you then hold?

A. I was taken into Portland and made officer manager.

Q. When was that?

A. That was from 1937 to '43.

Q. And in 1943 did you assume another capacity?

A. I became branch manager of the Portland branch.

Q. Branch manager of Portland. How long did you hold that position?

A. Well, it was '46, I think; about March of '46.

Q. As Portland branch manager, did you have super- [fol. 1871] vision over the bulk plant operations in the Portland area?

A. Well, we had no bulk plant operations in the Portland area. The same as what we would call a bulk plant operation in the territory, that was a salaried proposition.

Q. Did you have supervision over all of Richfield's activities, so far as Portland was concerned?

A. Yes, sir.

Q. Did you, specifically, have supervision of the service station outlets?

A. Yes, I did.

Q. Subsequent to 1945, what position did you hold?

A. Well, I was——

Q. That is, after——

A. From 1943 to '46 I was Portland branch manager. Then I became the real estate representative for Oregon and Idaho.

Q. As real estate representative, what were your duties?

A. We had considerable money set aside to expand, and I bought locations, existing stations, leased stations, and expanded any way we could.

Q. In other words, you acquired leases or property in fee?

A. We were primarily buying at that time. We bought them if we possibly could, yes.

[fol. 1872] Q. While you were the Portland branch manager, could you give us some idea of the number of Richfield service stations under your jurisdiction?

A. Yes. I think we had about, to the best of my knowledge, about 50 L-Os, and about 17 dealer accounts. That would be pretty close, as near as I remember.

Q. Those L-O accounts, were there any of those where Richfield owned the property in fee?

A. Well, not too many. I bought a few existing L-O units, but at the time I left the position as branch manager, I would assume they owned about somewhere around 20.

Q. Subsequently did you acquire additional sites, in your capacity in the real estate end of things?

A. I did, yes.

Q. Now, in connection with acquiring a particular piece of property in connection with an L-O unit, was there any particular basis for deciding whether to lease that property or to buy the property?

A. Well, very definitely. We had many cases we would take a lease, but we wouldn't want to own it. That could have been affected in a lot of ways.

Q. What rule of thumb was there, if there was one? What was the basis of determining the price that would be paid for any particular property?

A. Well, we had a yardstick of what we called $1.50 a [fol. 1873] gallon. As explained, that would be the monthly gallonage. Say the station had been doing, whether it was a Richfield station or a competitive station, and if we could establish the gallonage at the competitive station definitely, as an example, if he was doing 30,000, I could go up to $45,000. That would be based on $1.50 a gallon, and we finally went to—Mr. Sinclair authorized $2 a gallon, and we bought some subsequently for more than that.

Q. In determining whether you would buy, you would make surveys of the gallonage in the area, if there was not an existing unit, and in the event there was an existing unit, you would check the gallonage, the history of the particular location?

A. Yes, that station and every station within a 10-block radius, and, also, to make sure there was no street changes or road changes contemplated, such as——

Q. This basis of offering $1.50 a gallon to $2, that was figured on the property making a return on your investment, was it not?

A. Well, that was, so far as I know, considered a paying unit. If the gallonage would justify—if you could get it for $1.50 a gallon, based on the monthly gallonage, that was considered in our operation as a very good deal. We got some for less than that.

Q. Were there instances in which you purchased prop- [fol. 1874] erty below this rule of thumb?

A. Oh, yes.

Q. Did that occur frequently?

A. Well, yes, I would say a very high per cent was bought below $1.50.

Q. Calling your attention to a service station at 45th and Hawthorne, operated by Ed Radke, at Portland, are you familiar with that station?

A. I am.

Q. You purchased that property, did you?

A. Yes.

Q. How much did you pay for it?

A. Well, we paid, to the best of my recollection, $20,000, but there was an existing lease on there that ran about three and a half years.

Mr. Paradise: I move that be stricken. The question is: What did you pay for it?

The Court: Yes.

The Witness: We paid for it—that entered into the deal. What we paid for it, as I recollect, was $20,000.

By Mr. Somerville:

Q. Was there an existing lease on that property at the time you purchased it?

A. There was, yes.

Mr. Paradise: Objection on the ground of materiality. Mr. Bradford, will you delay answering the questions until [fol. 1875] we have an opportunity to object?

The Witness: Yes.

The Court: May I have the question read?

(The question and answer were read.)

The Court: All right. Go ahead.

The Witness: Well, that was the answer, there was a lease on it. Was that the answer? Yes.

By Mr. Somerville:

Q. Are you familiar with how much rental was being paid by Richfield under that lease?

A. Well, to the best of my recollection, there was minimum guarantee of $125 a month.

Q. How long did the lease have to run at the time the property was purchased?

Mr. Paradise: Your Honor, I must object on the basis of materiality.

The Court: You dropped your voice, Mr. Somerville, and I didn't get that.

Mr. Somerville: Will you read the question?

(The question was read.)

The Court: Overruled.

Mr. Paradise: We will be glad to produce these documents, your Honor.

The Court: I know, but that is all right, if he knows. Having negotiated the lease, if he knows about it, we can

get the information now, subject to being verified by the [fol. 1876] lease. After all, it isn't necessary that every fact be substantiated by an exhibit. You are making a very big record, gentlemen. I presume you are watching it, too. You are either putting in a lot of evidence, or doing a lot of talking, whether it is the lawyers, or the court, or the witnesses. Go ahead.

The Witness: If I recall that question, it was how long the lease ran at the time we bought the station?

[fol. 1877] Mr. Somerville: Yes.

A. I would say a little over three years to go.

Q. What was the gallonage at that station?

A. It was over 20,000 gallons a month.

Q. Under the yardstick, then, how much could you have paid for the property?

A. We could have paid 30,000 on the original yardstick.

Q. That was not an isolated instance, was it?

A. No.

Q. With respect to property on which a leased out station was constructed or where there was an existing leased out unit in which Richfield leased the property from the owner was there any gauge for determining the amount of rental that would be paid the property owner?

A. Well, we tried to get those at a cent a gallon, the ultimate goal. The best deal, we might say, was a cent a gallon, but we ordinarily wound up with some minimum guarantee, and oftentimes with one cent and a half with a minimum guarantee. However, we did lease property at a cent a gallon but they are infrequent cases.

Q. In connection with the leases to the service station operators there was usually a minimum rental there, was there not?

A. That was customary, yes.

Q. Was there any rule of thumb as to the amount of mini-

[fol. 1878] mum rental that the dealer would pay?

A. Well, yes. We would put out minimum as close as we could to this cent a gallon figure. If he was doing 10,000, that station was doing 10,000, why, we would put the minimum he would be paying at $100 a month. We put the minimum as close to that as we could, but we didn't put it over.

Q. Your effort, then, was to make that rental cheap——

Mr. DeMartini: Let him answer the question.

Mr. Somerville: Oh, I am sorry. Did you have something more to add?

A. Well, that is the way we put it together where we had an existing unit. Sometimes we would take a new one and we would not know what it would be, we would drop the minimum down and let the cent a gallon take care of it.

Q. Was there any effort to balance the rents receivable against the rents paid?

A. Well, they were carefully scrutinized, yes.

Q. From your experience during this particular time would the rents receivable and the rents paid balance out pretty closely?

Mr. Paradise: I object to that as no proper foundation.

The Court: If he knows.

Mr. Somerville: If he knows.

The Court: If you know of your own knowledge.

[fol. 1879] A. Well, the rental receivable, the rent receivable would be less than the rent payable when we took it over. Any branch operation, as far as any branch I have ever worked in, the rent payable would exceed the rent receivable for the total figure.

By Mr. Somerville:

Q. Were there some instances, to your own knowledge, where the operator paid the same rent as Richfield was required to pay?

A. Yes, we had deals where the L-O operator would be paying as much rent as we were paying.

Q. When you referred to rents are you talking about only the minimum, or the total amount that would be received under the scale whereby a minimum would be fixed, plus a certain amount over, a certain gallonage?

Mr. DeMartini: That is assuming a fact contrary to the evidence and it is contrary to the terms of the leases that are in evidence.

Mr. Somerville: Let me withdraw that question.

Q. Were there some instances in which the operator was actually paying more rental than you were paying to the property owners, that you know of?

Mr. Paradise: If the court please, I object to that testimony because counsel is obviously asking for isolated instances which do not call for a pattern. I do not see what materiality that would have.

[fol. 1880] The Court: Overruled. Go ahead, if you know of any instances.

A. Well, I believe I know of one or two. I think there is one in Portland at 78th and Gleason and, if I recall, we were collecting more rent than we were paying, to the best of my knowledge. There might have been another one, but I wouldn't want to say.

By Mr. Somerville:

Q. Calling your attention to the period that you were Portland branch manager, were there any 3-C or 2-B stations in the Portland area at that time?

A. Well, I believe the 2-B had been eliminated when I came in there as branch manager. There were two B's there in existence when I was office manager, but when I took the branch over the 2-B was eliminated, I am sure. We didn't have any more of them.

Q. Subsequently, during the period that you were branch manager and in the real estate department, did you have anything to do with acquiring 3-C leases?

A. Well, I had the forms with me and I was supposed to pick up any 3-C deal I could, but I never did make one because I had too much to do. I was familiar with the paper, but that was all. I never made a 3-C.

Q. Were you familiar with the usual type of arrangement that was entered into with 3-C operators?

A. Well, familiar from just the forms and knowing what [fol. 1881] it was, but not from actually putting one together.

Q. Do you know in connection with a 3-C deal, in addition to a 3-C operator's lease, a 3-C service station lease, a 3-C operator's sales contract, were there any other papers executed between the parties?

A. Well, of course, where they loaned money it would require a note, and I am not sure whether it required a mortgage or not but it did require a note.

Q. Were there many instances in which loans were involved?

Mr. DeMartini: I object to this, your Honor, on the ground the witness has testified he has not negotiated any of the leases. He is only familiar with the papers.

Mr. Somerville: He can testify if he knows, whether he negotiated them or not.

The Court: You are asking on his own, where he called?

Mr. Somerville: No. Whether any loans were a part of any 3-C transactions to his knowledge.

The Court: All right. If you know?

A. I do not know.

The Court: All right.

By Mr. Somerville:

Q. All right. Who was your superior while you were in the real estate department?

A. Well, my immediate superior was William Hance, assistant division manager with his office in Portland, and the [fol. 1882] next above him was Ernest Kirby, division manager in Seattle, and from then on up down here to the home office, but those were the two men I answered to.

Q. Were you under any instructions to accept 3-C deals except on 100 per cent basis, that is, that they deal only in Richfield products 100 per cent?

A. They had to be 100 per cent, as far as I knew.

Mr. Somerville: May I have Government's Exhibit 5-G?

Q. I call your attention to Government's Exhibit 5-G designated "Sales Contract" on Form 337, and Government's Exhibit 5-E on Form 59, and ask you if you are familiar with that type of contractual arrangement?

A. I am.

Q. And in connection with your duties as Portland branch manager and subsequently in the real estate department did you have anything to do with negotiating these papers?

A. Well, yes. I renewed several of those contracts.

Mr. Paradise: Mr. Somerville, may I interrupt you for a moment?

Mr. Somerville: Yes, sir.

Mr. Paradise: What exhibit numbers did you refer to?

Mr. Somerville: To 5-E and 5-G.

Mr. Paradise: Those appear to have been printed in 1948 and this man testified he left the employ in 1947.

Mr. Somerville: That is right. I meant to pick up a prior [fol. 1883] form.

Q. Mr. Bradford, in connection with those agreements that you just looked at, there were sales agreements and painting agreements in effect during your particular period?

A. That is right.

Q. You did not look at the print number when you looked at those documents there?

A. No. It looked like the same form to me.

Q. Calling your attention and I am now referring to Government's Exhibit 5-C which is a painting agreement, form 59, print date 6-39. Without reference to the particular date on there, I ask you to look at paragraph 1 and ask you if that type of provision was in the painting agreements that were negotiated and executed by you during this particular period?

A. I am sure it was.

Q. In executing a sales contract and a painting agreement with any dealer was there any understanding on the part of the dealer that he should deal 100 per cent in Richfield Petroleum products?

Mr. Paradise: Objected to on the ground of lack of foundation and it calls for the conclusion of the witness as to someone else's opinion.

The Court: Yes, sustained. By the way, when it comes to these supervisors, I do not mind a question on that being [fol. 1884] asked of an individual dealer which goes to his understanding, and even then it is leading. But when you come to these supervisors, the way they are to be judged is by what they did and what they said, the impression they gave. They do not know what impression the dealer may have had. He may have had his own impression that he had to deal in a certain way or something else, and that cannot be proved except by the facts. When you are asking leading questions you are weakening your own case, because the

average judge of experience—and I use that adjective because, if I have nothing else, I have had 24 years of experience as a trial judge—is not much impressed by generalizations induced by leading questions, leaving aside any question of the rules of evidence.

Furthermore, here is one thing that has developed in this case. This is our sixth day. For some ungodly reason I thought this was Thursday. I don't know why. This is our sixth day. We have covered a good deal of ground, we have run through a lot of witnesses. It is quite apparent now that insofar as the L-O stations are concerned the defendants are not contending that they did not boss the job, you see, because they contend that they own the station. They had a right to. They do not like to use the ordinary categories, and before we get through we will probably invent something. I will send it to my friend Professor Green of the University of Illinois who is an authority on words. We [fol. 1885] will invent some word that will cover a new relationship that is not included in "independent contractor" and "employer and employee." But it is a nameless relationship which they say has the characteristic of some fiduciary relationship, something like a del credere relationship or the like. We have not struck a name for it.

They are not contesting it. They are saying, "Why, of course, we did everything. They are ours. We owned them."

So there becomes a question of law whether that relationship is one which may characterized as akin to "employer and employee," as they contend, or akin to "independent businessman," as the plaintiff contends.

While I do not like to make words a fetish and be tied to nomenclature, ultimately when we come to deal with these matters we bear in mind that courts do not depart from common law categories. And you gentlemen know what happened to me in another Standard Oil case, the Soldier case, Standard Oil against the United States. My friend used to be my favorite litigant since I have been on the bench, in one capacity or another. In that case a Standard truck had run into a soldier who was standing at Sixth and Figueroa, early in the morning, waiting to cross and the truck injured him, and the Government, because they had several millions of dollars worth of claims in similar situations brought a suit.

Just as my luck would have it, I drew the first one in the [fol. 1886] United States of America, not only the first one in the District. Perhaps I ought to be glad that I tried them because that is what makes being a judge interesting. There are a lot of dull things about being a judge, as you all know.

The amount involved was only $190 and that $190 lawsuit went straight to the Supreme Court of the United States, because I held that there is not any reason why, if an employer can recover from a third party tort feasor who injures the employee, can recover the loss to the employee of the wages he had to pay and for the cost of hospitalization, if a parent can recover for a tort to a child, as he could at common law, I could not see any reason why this relationship between Government and soldier, just like the relationship between sovereign and soldier, could not come in the same category. And I held that the Standard Oil was liable for $190. The case went to the Supreme Court of the United States and only one man on that court—I was disappointed. I thought at least some of the judges who are classed as liberal will follow me in establishing a new category, but one of the most liberal judges started out right at the beginning—you know, whenever they begin that way and start to compliment the judge, you know you can say "Kiss goodbye to the case." But it started out and the late Judge Rutledge, a very, very brilliant man, started out: "We are asked to [fol. 1887] establish liability in a relationship which has not been recognized by the Congress," by which he meant that unless you have Congressional legislation we are bound by the common law rule categories, and despite the fact you cannot see any reason. You ought to read my opinion on it. [fol. 1888] I even brought in a lot of paper talk about natural law, to see how effective natural law is to decide special cases. Also, 20 years ago I sent in an article on natural law to the Los Angeles Bar Journal, but they were not interested in it at that time. Now everybody talks about natural law, and the Archbishop is even holding a seminar here on natural law, so I devoted quite a lot of thought to that, to sustain my contention that here was a condition of the type which you ought to recognize, because soldiering is an old art, and there exists a relationship between the soldier and the government, and when the government is liable, you

would have to pay the soldier's salary, because you cannot dock a soldier's pay, but I say when somebody injures the soldier the tortfeasor ought to be held liable. But the Supreme Court says nay, and Mr. Justice Jackson is the only one who agrees. He couldn't see any reason why in England, where the common law originated, they couldn't hold a third party liable for torts to a soldier and allow the King to recover. In England, which originated it, he couldn't see any reason why it should not be recognized.

Nevertheless, we are more hidebound by patterns than England which gave us these patterns.

So there is an illustration how sometimes courts, even in the plainest cases, will refuse to depart from categories which are well established in law. We have to bear that in [fol. 1889] mind. At the same time we have to bear in mind the admonition of the court, especially in the Masonite case, that ultimately the relationship established between the supplier and his outlet is not to be changed by the terminology which technical lawyers may have given to it rather than by the reality of the situation. And if we find a situation that shows a relationship comparable to employer and employee, then the mere fact that it does not have all the characteristics of employment should not prevent us from characterizing it as such. If we find a relationship of lessor and lessee, we ought to so characterize it. If we find one that has most of the characteristics of independent contractors, so that the people are independent businessmen, we ought to so characterize it.

I think earlier in this case I referred to one of my early decisions, the Owl Drug Company case. When I first became a judge of this court, I was put in charge of the Owl Drug bankruptcy in Nevada, and one of the problems in the Owl Drug Company case is known as the Slessinger decision, and in that case I was called upon to determine under the bankruptcy law whether a certain relationship was that of landlord and tenant. The Owl Drug Company had sold space in their drug store. In modern drug stores you will find they sell everything but drugs, and you have to look in the back to find a sign reading, "Prescriptions," after you get [fol. 1890] through the baby buggies and the late paper novels and the lunch counters. But, be that as it may, they sold them space, and it wasn't the ordinary type lease.

They didn't even call it a lease. They called it something else. I had to determine whether it was a leasehold under the old bankruptcy law, because there were certain rules relating to liability for rents in bankruptcy, whether a leasehold existed or not.

It was argued very strenuously that the relationship did not have any of the earmarks of a lease. It didn't have a specific term, because it was terminable at will, just as some of these are terminable, and so I analyzed the thing. I said, "Let us grant that it hasn't all the characteristics, nevertheless this is a relationship which has developed out of present contingencies," and I decided the case accordingly. Incidentally, since that time that case has been used in at least half a dozen case books dealing with bankruptcy, and such relationship.

Now, I am referring to this again, and I think I have said this before, to point to the fact that in these cases facts are very important. It is absolutely necessary that they be brought out through a relation of the facts and not through a generalization and general statements.

Mr. Somerville: Yes, your Honor. That I will endeavor to do.

[fol. 1891] The Court: You will remember when I brought this up last week, I think it was Mr. Paradise or Mr. DeMartini who said in answer to a question on my part that they are not contending that these L-O stations were not under their control, that they claimed they had a right to control them because the relationship there was that of ownership on their part, and the fact that the people there were not employees, were not on their social security cards, carried their own liability insurance, and the like, was, in their opinion, insufficient to deprive them of such rights as are incidental to ownership.

So in view of that fact it seems to me that from now on we ought to at least keep from piling up a lot of evidence showing what they did with L-O stations, when they say, "Why, certainly, we did it." Let me decide on the basis of the pattern that is developed whether they are correct in applying the relationship, or whether you are, and we have enough in the record now to base a finding as to what they are.

It may well be that they may not offer evidence to contradict some of these witnesses as to what they told L-O dealers, either at the beginning or when they caught them bootlegging as it were.

Mr. Dixon: I would just add this, or state this, your Honor: that the government is endeavoring, wherever it presents a witness who testified concerning an L-O arrange-[fol. 1892] ment, to have that witness add something of a different type or nature than the previous witnesses dealing in that category have testified to. But, as your Honor has stated, there is a question there as to what is the relationship, undoubtedly, and if the evidence does not add something to aid the court, then we do not want to present it to your Honor. We will follow that, your Honor.

The Court: I am not criticizing you. I am merely saying that in view of the issues which are developed now, at the present time, I am going to be a little stricter in observing the rules of evidence, because I think as to some of these the pattern is already there, and as to the others, as to which the great dispute exists, and that is as to whether what they call the operator stations—let's not call them "independent," but "operator stations" instead of leased stations—the question as to those is whether either on the contract, the tie-ins through the painting of the station, or the oral instructions they exercise control.

In other words, here is the way the law suit stands at the present time: As to L-O stations their contention is that they exercise control because they own the stations and the men there are in no better position than if they had been their salaried employees. Then as to that type of station the question then is as to what the relationship is. As to the other two types of stations, and let's refer to them as [fol. 1893] the operator station, as distinguished from the leased out stations,—as to the operator stations their contention is that they were independent, and, as a matter of fact, neither in the contract nor through oral suasion did they control them. I am not saying but what they may even admit there was some oral suasion to be brought in, and some of the witnesses did say that they tried to impress upon them it would be better if they just handled their products, but the contention of the defendant as to those is that they were independent, and they did not exercise

control. So, you see, the manner of proof, as it stands now, is entirely different as to their two categories.

Have I stated your position correctly, gentlemen?

Mr. DeMartini: Yes, your Honor. May I make one statement so as to avoid confusion. You referred to the second type of station as an operator station. We have referred to it throughout the trial as the dealer station, and the L-O as the operator station. We use L-O as synonymous with operator station.

The Court: That is my error then. We will correct that. That is all right. I forgot about the follow who brought in "new dealer."

Now, let's get back to the topic you are talking about.

By Mr. Somerville:

Q. We are talking now about the dealer station. You [fol. 1894] understand now what we mean by "dealer station"?

A. I do, yes.

Q. In the dealer station the dealer would either own the property, or lease it from someone other than Richfield, would he not?

A. Yes, he could own it or lease it, either one.

Q. That is right. Now, in connection with the execution of the sales contract and the painting agreement with any dealer, did you, as a part of the negotiations, exact any promise on the part of the dealer that he should deal 100 per cent in Richfield products?

Mr. Paradise: I object to the question on the ground it calls for the conclusion of the witness, and for a lack of foundation.

Mr. Somerville: I am asking what he did.

Mr. Paradise: Yes, but I think we should have a foundation as to time and place and persons present.

The Court: Read the question. I think this is just merely—I don't like the expression "preliminary question," but I think this is a question which merely directs the witness' attention to a particular situation and may not be objectionable because a foundation will be laid if there is an answer. Will you read the question, please?

(The question was read.)

The Court: Overruled.

[fol. 1895] The Witness: Well, the only way I could answer that, that was what we tried to do, but one dealer might object strenuously to throwing out a lubrication set-up he had, which might be Pennzoil, or some other oil company.

By Mr. Somerville:

Q. Mr. Bradford, you did execute a number of these contracts during this period?

A. That's right.

Q. Could you give us any approximate number? Do you have any idea?

A. Well, I would imagine in the Portland branch, there would be an average there that will expire at different times, but always during the year there are renewals. The bulk of them are renewals. There are a few new ones, because you will lose an account once in a while, and if you don't pick up some as you go along, a branch is running behind, but the bulk of them were renewals.

Q. Now, in connection with that, are painting agreements executed concurrently with the sales contract?

A. Yes.

Q. Then subsequently might there be a painting agreement entered into without a re-execution of a sales contract?

A. Well, I don't know of a case where we did that, offhand. We would draw the whole deal up at once.

Q. Pardon? I didn't hear your answer.

A. I said we would draw the whole deal up at one time, [fol. 1896] and call it a sales and paint——

Q. What was the usual period of time involved?

A. Well, we didn't ordinarily want to go over five years, and we didn't want to go under two years, but five years was a standard time on an ordinary unit. Sometimes for some reason we didn't want them that long.

Q. And at the expiration of that time, if you wanted to renew it, you would continue on with a new agreement, a new sales contract and painting agreement?

A. We would write a whole new agreement, yes.

Q. Now, normally, how often does a station need paint?

A. Well, that involves considerable argument. The dealer

might claim he needs paint every year, and the company might claim it needs paint every two years. We were in an argument almost every spring on some stations.

Q. Now, I would like to know, Mr. Bradford, in your activities, how these painting deals were handled. First, you would determine whether a painting job would be allowed, or if a new painting agreement would be entered into?

A. You understand, in the first place, Mr. Somerville, that painting agreement would be for the same term as your sales contract. Then we would paint the station when it needed a paint job. You wouldn't sign a new paint agreement every time you painted a station. You could paint a [fol. 1897] station four or five times on the same paper, existing paper. We just decided it. I, as the branch manager myself, I made my own paint requisitions early in the spring so that Seattle wouldn't get ahold of all the money, that we would have some down there.

The Court: Then you have the fight, Seattle fights Portland, and Tacoma fights Seattle.

The Witness: So I would get those early in the spring, and in using my judgment, I had an assistant division manager right there, and he had to approve them, too.

By Mr. Somerville:

Q. And who was that?

A. Mr. Hutchinson. And then we sent them to Seattle to the division manager, Mr. Kirby, and he either approved them or rejected them, turned them back to us if he wasn't going to paint a particular station.

The Court: But regardless of whether the paint was renewed or not, the painting agreement was tied to the—what do you call the other agreement?

The Witness: The sales agreement.

The Court: —the sales agreement, so that between the two you would continue to sell him, and he would continue to carry the banners of Richfield?

The Witness: That's right.

The Court: Isn't that true?

The Witness: Yes.

[fol. 1898] By Mr. Somerville:

Q. Calling your attention to paragraph 1 in the painting agreement we referred to a while ago, dealing with:

> "That dealer shall remove from the surface of the service station which is to be painted all signs and insignia, and upon completion of the painting of said service station by Richfield shall not place upon or over the painted surfaces any advertising sign, trademark, insignia or any other matter without first procuring the consent and approval of Richfield,"

was this a requirement that you exacted of the dealers in connection with their getting a paint job?

Mr. Paradise: I object to the question. Counsel is asking a question concerning a provision in the written agreement. If he is asking concerning conversations, we should have the foundation. If he isn't, this is purely argumentative.

Mr. Somerville: Permit me to withdraw that question.

By Mr. Somerville:

Q. Calling your attention to that particular paragraph, now, there were occasions when the dealer would request a paint job; is that correct?

A. Yes.

Q. Now, in those situations did you ever have dealers who might be displaying competitive signs, that is, oil signs [fol. 1899] or some other signs advertising a product directly competitive to an approved Richfield product or Richfield lubricating oils and greases?

A. Yes.

Q. Now, in that sort of an instance would you permit a painting job so long as that situation continued to exist?

Mr. Paradise: I object for lack of foundation and as calling for the conclusion of the witness, and not asking for conversations.

Mr. Somerville: I am asking the witness what his own action was with respect to all of these situations that arose.

The Court: Yes. Overruled. Go ahead. The question is what you did, not what you thought, what you did under those circumstances.

The Witness: Well, I would go up to a service station, and to make the paint requisition, the first thing I did look for was competitive signs, because I had to take a photograph of that station, and if that was attached to the paint requisition, it would be very, very poor business on my part to send a paint requisition to the office with a photograph of the station showing competitive signs overlaying our paint, even a fence, and we might paint the fence, or superbuildings, or anything.

The Court: In other words, your paint job was not an [fol. 1900] agreement to keep any station in good condition, but it was to keep a station which carried the Richfield banner? Isn't that true?

The Witness: Well, that's right, yes.

The Court: And the requisitions had to show that what you were seeking paint for were stations which were painted "Richfield,"——

The Witness: That's right.

The Court: And carried no competitive signs or banners, as you call them; isn't that true?

The Witness: That's right, yes, sir.

By Mr. Somerville:

Q. Did you ever have a situation arise in which you told the particular dealer to remove competitive signs?

A. Yes. I would say most of the time on those dealer accounts there would be something there objectionable to photograph.

Q. Were there ever any occasions in which you requested the dealer to remove competitive products in order to get a painting agreement?

A. Yes. That was, I would say that was our opportunity to move the competitor out of there.

Mr. Paradise: I move that be stricken.

The Court: Oh, no. Go ahead.

The Witness: In other words, if we could remove a com- [fol. 1901] petitive oil in conjunction with giving a man a high-priced, expensive paint job, sometimes which involved large superbuildings, and that runs into a lot of money, why, the way we felt and the policy of the company, as it has been handed to me, was that we were main-

taining a beautiful unit and kept it painted not for some competitor to sell his merchandise through, but any time we could move any of that merchandise out of there, that was my job, yes.

By Mr. Somerville:

Q. Now, let's go upstairs to Mr. Hutchinson and Mr. Kirby. Did you ever receive any instructions or have any conversations with either of those men concerning this particular paragraph in the painting agreement, regarding the placing of any advertising over painted surfaces without the consent and approval of Richfield? Did you ever have such discussions?

A. Well, they were on notice——

Mr. Paradise: That question calls for a "Yes" or "No" answer.

The Witness: Yes.

By Mr. Somerville:

Q. When did such discussions occur, to the best of your memory?

A. You mean a particular one?

Q. Well, yes, if you have a particular one, let's have it.

A. Well, the one that I had difficulty with getting a paint [fol. 1902] requisition through was Kowalski Brothers on North Lombard Street.

Q. Who was the conversation with concerning this station?

A. Well, there were several conversations between Hutchinson and myself, and Hutchinson and myself and Mr. Kirby I would say a time or two, yes.

Q. And what did Mr. Kirby say to you?

Mr. Paradise: Will you fix the time of this meeting?

The Witness: Pardon?

By Mr. Somerville:

Q. Could you fix the approximate time of this, sir?

A. Well, it wasn't in '43. That was renewed—it would

be—it was either the spring of '44 or '45. I am not positive. I think it was '44.

Mr. Paradise: Will you fix the place?

By Mr. Somerville:

Q. Where did these conversations occur?

A. In Mr. Hutchinson's office in Portland.

Q. Before going into what the conversation was, had Kowalski been handling competitive oils?

A. Yes.

Q. Did he have competitive oil signs on the premises?

A. Yes.

Q. All right. What were the discussions that you refer [fol. 1903] to?

A. Well, the discussion originated that it was a very expensive paint job, and they wanted it painted. We had, you might say, two ways out. One, to paint it each time they wanted it, which might be -very year, or we might *hang* tough and paint it every two years. But if we were going to paint it every year, why, we certainly wanted the co-operation of the dealers, the three brothers there, to give us a break on the motor oil with the thought in mind we would offset this expensive paint job. It was a large building, a stucco building.

Q. Did Mr. Kirby then allow the paint job at that time?

A. He eventually did, yes.

Q. Well, did you convey any word back to Mr. Kowalski?

A. Well, I went out there and told them what I was up against, that I was in the middle, and I made some headway on the motor oil; not much.

Q. Did you tell him to get rid of the motor oil?

A. Well, you don't tell those fellows to get rid of anything. You have to sell them.

Q. Did you tell them that it had anything to do with his ability to get a paint job?

A. I told him, yes, if he would program a little better on oils and batteries and TBA, we had no trouble, of course, [fol. 1904] with gasoline, why, I would go all out on the paint job.

Q. Now, in connection with your own activities, I am asking you whether you would insist upon these competitive

signs being removed from dealer stations, whenever that might occur?

Mr. Paradise: That does not fix the time and place.

Mr. Somerville: I am talking about his general activity.

Mr. Paradise: I submit that that question is so vague and ambiguous, it is meaningless without relation to particular facts.

Mr. Somerville: This man is telling the way he reacted to this.

The Court: All right. Overruled.

The Witness: My answer to that, Mr. Somerville, is that it is awfully hard to pin it down to particular cases, because you have different circumstances. One year your sales and paint agreements might be expiring. Our competitors knew when they were expiring, and, why, at that time we would do a lot of things for a dealer, but if I was able to sign him up on another five years of sales and paint, the competitor would go around looking around for somebody else's account, and then we weren't so lenient perhaps. But you would get a man to take down a sign, and very often you would go by, and he would have it back up again.

[fol. 1905] By Mr. Somerville:

Q. Now, what did the painted surfaces usually include? Will you explain that?

A. Well, all exposed surfaces, interior and exterior. That did not mean we painted them all, but the requisitions called for—it was blocked off on quite a long form, a legal-sized form, and everything was listed right down there, even the lubrication equipment, but that didn't mean we painted that each time. But you could figure out what needed paint, and you had to inspect the station and equipment and see what needed paint.

Q. Now, the service stations had fences around them, ordinarily?

A. Well, yes, that is a common practice up there to have fences around the stations.

Q. Were they painted in Richfield colors?

A. Most dealers were very insistent that the fence be painted. You wouldn't want to leave an unpainted fence with a new paint job on the super-facilities.

Q. Did you, in your activities, permit these dealers to display the diamond-shaped Goodyear signs, or any other signs advertising approved TBA products?

A. Well, you asked if I permitted it?

Q. Yes.

A. Yes, certainly.

Q. In your activities, did you ordinarily attempt, or [fol. 1906] did you instruct them to put up Goodyear signs?

A. Well, he would have no instruction to put up a sign unless he had Goodyear tires to sell. Goodyear would put the sign up there, and we were very happy to see it up there, yes.

Q. You never told him to take those signs down?

A. Not the Goodyear, no.

Q. Would that situation be true of a sign advertising competitive products, say, on the fence?

Mr. Paradise: That is speculative.

The Court: No. Overruled.

The Witness: Well, that sign, as I say, that sign would have to come down, or, to send it in to Mr. Kirby with a competitive oil sign out there on the fence, why, I don't know of any specific case that ever happened that way, but I would assume I would get it back, but I couldn't recall it.

By Mr. Somerville:

Q. Would there be any portion of the service station premises where a sign would be permitted by you?

A. A competitive sign?

Q. I mean, is there any part of the station that isn't painted where you would permit a competitive sign?

A. Well, we had what we called an A-board, that we posted ourselves, and many of these dealer accounts, they would post something on that, and we would object [fol. 1907] to that and eventually pick up the A-board and take it down to the plant, but there was no instruction as far as permitting the man that owns that station to not put up a sign. I didn't have anything to say as to what he would put up or what he couldn't do. It was my job to sell him on the idea to take these things down, and if I couldn't do that, why, he kept on handling the product.

But at the time the paint requisitions went in, why, I never had any trouble with the dealers, for them to take the signs down long enough for me to take a photograph, at least.

The Court: In other words, the only way of penalizing them, and I am discussing the general cases too, and if you didn't like it, and you may have objected to it, but the only way that you had of making your desire followed was when it came to renewing the paint job, and then you made known to them that you did not like the other sign, but so long as he kept taking your products, you didn't do anything about it? Is that what I understand you to say?

The Witness: Well, that's right, your Honor. The time I was involved as a branch manager would be at the painting time, but at the same time there were salesmen calling on that account all the time anyway, that is, under my direction. But I would run into it at the time the paint job would be brought up, and it would be forcibly brought to my attention.

[fol. 1908] The Court: All right. Gentlemen, while there is a lull for the moment I want to call your attention to the case of which I spoke. There are several cases of that type in the same volume. I learned bankruptcy law very fast in 1935. I took office on the 5th of September and I showed up in Nevada on the 1st of October and filed these opinions.

The case is In re Owl Drug Co., 12 F. Supp. 439. The case is also reported in the American Bankruptcy Reports, 303 Bankruptcy Reports, the new series, 692. I still approve the language I used there. Some of it may be applicable to the discussion here when we get down to arguing, so I want to read just one or two paragraphs from it.

As I told you, the question was whether it was a lease and, if it was a lease, it was not a provable debt in bankruptcy under the old bankruptcy law so far as the nonexpired terms was concerned. It was too contingent. And this is what I said. I will pick out two or three short paragraphs from the opinion. It was argued that it was a license that they had control over the management of the conduct of

the business, and that he was really a mere licensee. And I held that it was a lease, and this is what I said: —I am reading from page 442—

> "The line of demarcation between leases and licenses is not always easy to draw. At times, we find courts calling an agreement a license in order to confer upon [fol. 1909] upon the parties to it certain rights which would not be theirs were they considered parties to a lease. At other times, courts resort to the law of landlord and tenant in order not to subject the parties to the arbitrary penalties incident to a license."

Then skipping to the bottom of the page:

> "By the terms of the instrument under consideration here, the bankrupt acquired the right to occupy a definite space in the claimant's store for a definite period of years, for which he paid a rental measured in terms of percentage of sales, with a minimum guaranty to the lessor. Definiteness of space to be occupied is one of the criteria for determining that an instrument is a lease. Baille v. United States, supra.
>
> "It is true that the claimant exercised certain supervisory powers, but these were powers made necessary by the nature of the relationship, and by the fact that the business conducted upon these premises by the bankrupt had to conform, in order to avoid friction, to certain common arrangements applicable to the entire store. These arrangements do not detract from the estate which the bankrupt acquired by this instrument."

Then skipping, after analyzing some of the clauses in it, I said, page 443:

> [fol. 1910] "It may be conceded that the designation of an instrument as a lease by the parties to it may, of itself, be inconclusive. Its nature is to be determined from a study of its conditions as a whole.
>
> "When so studied, the instrument under consideration has all the earmarks of an instrument creating a leasehold interest."

A more lengthy discussion and then, in talking about the criteria, distinguishing from other relationships, I said, reading from page 444:

> "Clearly there is no mere license. Nor is there a partnership or joint adventure here, because the lessor does not share in the loss. It is true that a joint adventure or partnership appearing, a sharing of the loss may be inferred by the court, which may even determine the manner of sharing the profits where the agreement is silent. But the lessor has surrounded himself with such a protective armour, so far as any liability for any act of the lessee is concerned, that it would be impossible without doing violence to the instrument and making a new contract, to infer an obligation to share in any loss. The most substantial consideration which the lessor receives under the instrument is his rental in the form of a percentage subject to a minimum guaranty to insure what, no doubt, the lessor thought was a fair rental by reference to the [fol. 1911] sales made by it during the previous year when it conducted the department itself. It is true that the lessor sought to integrate the department into its store; but such integration was only for the purpose of having it, and the business to be conducted in it, conform to its general policy. Such a requirement was an absolute necessity if friction between the lessor and the lessee was to be avoided. But the supervisory powers which the lessor retained were not of such a nature as to deprive the lessee of that exclusive possession of a definite portion of the premises, the situs of which could be changed by the lessor upon thirty days' notice to the lessee and upon his substituting a site equal in area, and of which he could not be deprived except for breach of the conditions—which is the characteristic of a lease."

Then more discussion, and this is the concluding paragraph which applies to any kind of a lease.

> "In the complex civilization in which we live, in determining the relationships created by written instruments we must bear in mind their essentials, in the

light of modern requirements. *Restrictions in the* rights of tenancy which do not affect its fundamentals should not be interpreted as destroying the relationship. One who leases office rooms in a modern office [fol. 1912] building subjects his right of occupancy to many supervisory rules by the owner of the building. The owner furnishes many of the facilities, and even the tenant's ingress and egress to and from the building may be under the control of the lessor, as is the case in multiple story buildings having elevators. The lessor may even retain the right to object to persons having access to the building. And yet such restrictions and conditions, and others that might be adverted to, do not affect the status of such occupant as a lessee. In like manner, the status of the occupant of an apartment in a modern apartment building as a tenant is not changed by the mere fact that the apartment building owner may retain control over the common halls, corridors, and elevators, may provide the heat, light, refrigeration, and other utilities, and may even regulate the race of persons to be employed by the occupants as servants.

"We conclude that the relationship created by the instrument under discussion is that of landlord and tenant."

So you can see as far back as 1935, in determining what relationship was created we went beyond the wording and tested it by the indicia which we found in the instruments themselves.

[fol. 1913] And that is what ultimately we will have to do here as to every one of these three groups, regardless of what you call them or what the parties to the agreements call them.

All right, had you finished?

Mr. Somerville: Not yet.

The Court: Let us take a short recess and give you time for more thoughts and more questions.

(Short recess)

I wanted to tell counsel that Judge McCormick has been away and the result has been that I have had orders and

things to do in between which I ordinarily do not do. So sometimes I take longer for a recess than I would ordinarily take.

All right. Let us go on and finish with this witness.

By Mr. Somerville:

Q. Mr. Bradford, what employee under your supervision had any jurisdiction or supervision over the dealer type stations?

A. Well, during my branch managership there were possibly six or seven. There was a man named Ford, a man named Scollard, and Williamson, Parish, and Brown.

Q. What titles did they bear?

A. Salesmen.

Q. Salesmen?

A. Yes, sir.

Q. Did you have any meetings with your salesmen or [fol. 1914] merchandisers with respect to the particular problems encountered in service stations?

A. We met each morning at 12th and Sandy.

Q. 12th and Sandy, is that a service station?

A. It was an office and super-station that we owned the improvement, and we had an office in back. That was our up-town office.

Q. Who would be present at those meetings?

A. Well, there would be the salesmen and merchandisers and myself, and any representatives from the division office of Los Angeles or whoever happened to be there.

Q. Would the salesmen report at that meeting particular instances in which a dealer type station might have signs openly displayed, competitive signs?

Mr. DeMartini: I object to this as leading, your Honor, and suggestive.

The Court: Yes, it is.

By Mr. Somerville:

Q. At these meetings what instructions, if any, did you give to your salesmen with respect to competitive signs on dealer stations?

A. Well, that of course would just be one of the things discussed. It was a problem that we lived with from day to

day. Oftentimes I might get some note from the assistant division manager, Mr. Hutchinson or maybe one of the officials from Los Angeles seeing an unsatisfactory condi-
[fol. 1915] tion, and it would be brought forcibly to our attention and we would go over the thing and see what we could do with it. Ordinarily it was just one of the problems that we lived with. A salesman knew that he was graded more or less on his success in eliminating competitive merchandise out of the station. That was quite a boost for a salesman.

Q. With respect to the sales contract which the dealer enters into the maximum and minimum gallonage figures are specifield there, are they not?

A. That is right.

Q. Did you have anything to do with the maximum and minimum gallonage figures specified?

A. Yes.

Q. Do you know how they were determined?

A. Yes.

Q. What was the basis of determining the minimum and maximum figures specified therein?

Mr. Paradise: Objected to for lack of foundation, unless counsel ascertains first that the practice was standard and he is not talking about isolated instances, and whether there were instructions on this.

The Court: All right.

By Mr. Somerville:

Q. Was the practice standard?

A. Yes.

Q. First of all, did you have final authority?

[fol. 1916] A. Well, if that contract was drawn in my office it would go into the division office for final—it was signed, in other words, executed by Richfield in the division office.

Q. Did you receive any instructions from the division office or from Los Angeles concerning the formula to use in determining the maximum and minimum figures?

A. Well, that was in the Division Managers' bulletin, and you would have to go back a considerable distance to

find it. But there was a bulletin to that effect, yes, that had been followed for years.

Q. What was the basis for determining the minimum and maximum?

A. Well, we had two propositions. One is, if you are renewing the existing unit and you knew the gallonage at the end of five years, if that was the time of the contract, the term, you would take an average on the station and, if your old minimum was too low, why, you would adjust it on your new one. On the other hand, if you were taking a competitive unit, why, then you just had to calculate the best you could, and oftentimes, most times, we ballooned those up a little because we wanted to get the account and we wanted to make it look as good as we possibly could.

Q. What relationship, if any, would the minimum quantity specified have to the existing gallonage of the station? [fol. 1917] A. What effect? I didn't get the first part of your question.

Mr. Somerville: Would you read that question back, Mr. Reporter?

(Question read by the reporter.)

A. Well, we would set that minimum in a round figure. It might average 10,635 gallons and we would put a minimum, I would say, in there of 11,000 in round figures.

Q. Then what would the maximum be in that situation?

A. Well, it is supposed to be 20 per cent more.

Q. 20 per cent above the minimum?

A. That is right.

Q. In the painting agreement there is a certain amount specified as to the estimated amount of paint job, is that correct?

A. Yes.

Q. Were there any instances to your knowledge where a dealer, his sales contract might be terminated before the expiration of the five-year or two-year term?

A. Yes, some of them were. We lost some.

Q. How would you determine who would pay the cost of painting?

A. Well, if an account went competitive immediately following the new paint job, why, the branch office would

[fol. 1918] get a statement from the regional accountant billing this dealer for the paint job. If it was, say, halfway between, if we were painting that station once a year and the paint job was six months old, why, they would bill him for half of the cost.

Q. During the period that you were branch manager in Portland was there a new TBA distribution set up?

A. Well, it was not new. It was radically changed and set up on a more definite basis than the old one.

Q. Was distribution at that time made to TBA distributors?

A. We had there TBA distributors prior to this reorganization of that operation, but they were dealer accounts. One was a dealer account and two were L-O's. So we set it up and took a dealer from 45th and Hawthorne, a man named Ed Radke, and took him out of the station and put him in TBA and nothing else. He leased the store building down on 37th and Hawthorne.

Q. Did you indicate——

Mr. Paradise: You are talking there about an L-O dealer, are you not?

The Witness: He was an L-O dealer, yes.

By Mr. Somerville:

Q. At any time during this period did you receive any instructions from any of your superiors concerning whether or not competitive TBA merchandise could be sold to Richfield stations, or, I mean to stations handling Richfield gasoline?

[fol. 1919] A. Do you mean any instructions as far as the TBA distributor is concerned or——

Q. Well, any instructions as pertaining to the area the TBA distributor would service or the accounts that he would sell?

A. Well, this was strictly approved items on the TBA.

Mr. Paradise: The question called for whether or not you received instructions.

A. Yes, I did.

By Mr. Somerville:

Q. And who did you receive instructions from?

A. Well, we had a three-day meeting. George Miller was there and J. T. Foster was there, Mr. Kirby was there, Hal Hutchinson was there, Art Carnine, regional accountant was there, Bud Austin, regional credit manager, was there.

Q. Where did that occur?

A. I believe that was in the Benson Hotel in Portland.

Q. And what was said with respect to the TBA distributor?

Mr. Paradise: Will you indicate the time, please?

By Mr. Somerville:

Q. Did you indicate the time on that? About when did it occur?

A. I believe that was in the fall of '43.

Q. What was said and by whom concerning the TBA setup?

A. Well, this went over a period of three days and the proposition of appointing a TBA distributor or two TBA [fol. 1920] distributors, which is what we thought we needed, and the whole operation was threshed out right there, who these distributors would be. And Goodyear boys were there and we were taken on a trip into the Goodyear warehouse and shown merchandise that we had never heard of in the oil business before. The whole thing was threshed out there on a hundred per cent, strictly a 100 per cent exclusive basis, you might say.

Q. Are you referring now to the sales or what the dealer-operators would be permitted to handle?

A. Well, yes; and also, what the TBA distributor would be permitted to handle. In other words, if we kept the unapproved merchandise out of the TBA distributor's hands, why, the problem was half licked. The dealer then would have to get the off-brand stuff somewhere else. The main——pardon?

Q. I did not mean to cut you off.

A. The main effort there was to set up a TBA distributorship with a TBA distributor that we knew would program, you might say, and we did not have to police his operation,

that we knew that this man was handling approved items and nothing else. We did not need a police force.

Q. Was there any distinction with respect to that policy in its application to dealer stations as opposed to L-O stations?

A. Well, of course, we all knew that we had to sell that [fol. 1921] to the dealer account. That was certainly in the program, yes.

Q. These meetings that you held as branch manager every week at this service station on Sandy Boulevard would you review the reports of sales that TBA made to dealer accounts and to L-O accounts?

A. Well, at the close of each month we would get certain reports. The 200 report we called the service station. The 200 report was the operation of that service station dealer and L-O. They were broken down in sheets. The merchandiser, his stations would be on one sheet, and then we had another report from the TBA distributor on his sales to all the stations, broken down by territories. And my job was to go over and pick out the weak operation, and those reports came to me from Mr. Hutchinson ordinarily. He was quite a letter writer. Ordinarily his letters would be very much in detail. There would be page after page, and he picked out maybe—they were the weak ones I got, and he would go into detail what he thought was wrong with the station. And he was a branch manager there, himself, and he certainly was in a position to put his finger on it. Then our job at 12th and Sandy that, of course, occurred, I imagine, about the third of the month, because we got those reports out right away, and we would go over that. I would go over it with the merchandisers collectively and then probably individually afterwards. And the problems, if the station was on poor operation, it was a problem we had to do something to lick it some way.

[fol. 1922] By Mr. Somerville:

Q. Calling your attention to a service station operated by Milton Boyer at Northeast and Lombard and Albina, Portland, Oregon, are you familiar with that particular dealer?

A. Yes, sir.

Mr. DeMartini: Is he an L-O dealer?
The Witness: An L-O unit.

By Mr. Somerville:

Q. At that particular station, was that operator selling any competitive products at any time?
A. Yes, we had trouble with Milt Boyer.
Q. When did this occur, approximately?
A. Well, as far as my experience was concerned, he was handling off brand merchandise in there when I became branch manager.
Q. And what did you do about it?
A. Well, he was eventually checked out. The merchandiser found a new operator and put him in the station.

The Court: Your policy generally was in the case of these L-O stations, that if they did not conform after several discussions or attempts to persuade them not to handle it, you checked them out, as it were? You found another operator to substitute for him?
The Witness: That's right, your Honor. Of course, you couldn't promiscuously check them out. The problem was [fol. 1923] to find someone who did a better job than he was doing.
The Court: That is right. You didn't check him out until you found someone who was more certain of complying?
The Witness: That's right; and when we would check him out, we didn't check him out until we could improve the situation. Otherwise, we would let him stay there until we could improve it.

By Mr. Somerville:

Q. In this particular instance, did you have the final authority to terminate Mr. Boyer?
A. Well, as far as the actual mechanics of the operations, yes. However, as I say, all of our deals were executed in Seattle by the division manager's clerk.
Q. However, did you recommend that Mr. Boyer be terminated?
A. I am not positive on Mr. Boyer just how——

The Court: Did Mr. Hutchinson take the final action?

The Witness: Well, we generally discussed it in the office before we would check them out. You understand, this man Boyer was an old-time dealer, and we tried to be pretty sure of what we were doing. We were very careful not to check out an old-time dealer, for obvious reasons. But I think that Hutchinson and I probably talked about Milt Boyer, along with a few others. Yes, I would say so.

By Mr. Somerville:

Q. Did the reason for his termination have anything to [fol. 1924] do with his handling of competitive products?

A. Well, yes, that was primarily the reason.

Q. Now, calling your attention to a service station at 23rd and Burnside in Portland, Oregon, operated by Walter Edgar, are you familiar with that station?

A. Yes, sir.

Q. That was handled by Mr. Edgar during the period you were branch manager?

A. Yes, sir.

Mr. DeMartini: Is it stipulated that Mr. Edgar is an L-O?

Mr. Somerville: Yes, sir.

By Mr. Somerville:

Q. Now, at this particular station did Mr. Edgar program on TBA, to your knowledge?

A. Not too well, I would say.

Q. Did you receive any instructions or any complaints from any of your superiors concerning this man's handling of any competitive products?

A. Repeatedly.

Q. From whom?

A. Mr. Hutchinson.

Q. Repeatedly during what year?

A. 1944, starting—well, I don't know just when it started. I imagine somewhere shortly prior to the first of the year, 1944.

[fol. 1925] Q. Would you tell us what those complaints were and the circumstances under which he made them?

A. Well, it so happens that Mr. Hutchinson resided in the Envoy Apartments right back of this station, up, I

think, on the fourth or fifth floor, and the front window of his apartment looked right down on this operation, and Mr. Hutchinson is a Richfield Oil man twenty-four hours a day, and he became very unhappy on Mr. Edgar's operation, and repeatedly I would go to the office and I would get down there somewhere around noon, ordinarily, after the sales meeting, and I would often find a note on my desk on Mr. Edgar's failure to handle Goodyear tires. He was calculating how many tires Mr. Edgar must have sold by watching his operation, and he wouldn't sit up there in the daytime, but the station was open quite late, and the note would give me an estimation on the tires that Mr. Edgar sold as against the number that was sold to Mr. Edgar by the TBA distributor, which, if I recall, would about figure 6 against 75, or something like that.

So one note would complain about that, and then another note, the next one, would complain about the condition of the station, and he even listed them down by one, two, three, four, on down the sheet.

Q. Now, after you received these complaints from Mr. Hutchinson, what did you do about it?

[fol. 1926] A. Well, of course, I got a little rough with the merchandiser a time or two, but that didn't seem to do any good. So I made a few calls on Mr. Edgar myself. That didn't do much good, either.

Q. What was the final outcome of that?

A. Well, the final outcome was that I was instructed to remove Mr. Edgar from the station.

Q. By whom, and when?

By Mr. Hutchinson:

A. That was in 1944, I believe in May. So I requested a termination notice from Seattle, which they were very, very reluctant in sending down. In fact, they made me promise that I would get a 306 signed somewhere during the operation, so that this termination notice could be destroyed and a 306 would be in the file.

Q. A 306 is a mutual termination agreement?

A. A mutual termination, yes. I was successful in doing that. I think I helped Walt to get a stove included in the pick-up, and I did finally get him on a 306.

Q. In getting him on a 306, did you make any promises to him concerning his check-out?

A. Well, I remember telling him as far as I was concerned he could use me as a reference. In fact, I did recommend him strongly for a Richfield station at Hanford, which eventually became the largest Richfield service station in the Northern Division. I don't know whether he was con-
[fol. 1927] tacted or not, but I recommended that to the assistant division manager in Washington, Doc Bagby, who was out of my territory, but had been in Portland prior to that. Whether he contacted Mr. Edgar, I don't know.

The Court: But, at any rate, he went out of that station?
The Witness: He went out of the station, yes.

By Mr. Somerville:

Q. Just one more thing. I hand you a penciled note here, carrying "E. J. Bradford" at the top, dated 4-10-44. with the initials—what are those initials?
A. H T H.
Q. Do you recognize that signature?
A. Oh, yes.
Q. —or those initials?
A. Yes, I do.
Q. Whose initials are they?
A. That is Mr. H. T. Hutchinson.

Mr. Somerville: I would like to have this marked as the Government's Exhibit for identification next in order.

The Court: We will not stop for the cross examination now. We will continue that at 2:00 o'clock.

The Clerk: Government's Exhibit 12, for identification.

[fol. 1928] (The document referred to was marked Plaintiff's Exhibit 12, for identification.)

Mr. Somerville: The government offers this exhibit in evidence.
The Court: It may be received.
The Clerk: Exhibit 12 in evidence.

(The document, heretofore marked Plaintiff's Exhibit 12, for identification, was received in evidence.)

The Court: 2:00 o'clock, gentlemen.

(Whereupon at 12:25 o'clock p. m. a recess was taken until 2:00 o'clock p. m. of the same day.)

[fol. 1929] The Court: All right, gentlemen, let us go.

Mr. DeMartini: Will you take the stand, Mr. Bradford?

The Court: All right, Mr. Bradford.

ELGIE J. BRADFORD (Recalled.)

Direct examination (Resumed).

By Mr. Somerville:

Mr. Somerville: I have an exhibit for identification.

Q. First of all, I would like to ask you just one question, Mr. Bradford. Is this a copy of the notice of termination served on Walter Edgar, dated May 2nd, 1944?

A. It is, yes. He signed it there.

Q. And that is Edgar's signature?

A. Edgar's signature.

Mr. Somerville: May I have this marked next in order Government's exhibit for identification?

Mr. DeMartini: No objection.

The Clerk: That will be 13 for identification.

(The document referred to was marked Plaintiff's Exhibit 13 for identification.)

Mr. Somerville: I move its introduction in evidence.

The Court: All right.

The Clerk: 13 in evidence.

The Court: It may be received.

[fol. 1930] (The document referred to was marked Plaintiff's Exhibit 13 and received in evidence.)

Mr. Paradise: Edgar was an L-O operator?

Mr. Somerville: Yes, sir.

Cross-examination.

By Mr. DeMartini:

Q. Mr. Bradford, what were your duties as an office manager in Portland?

A. In Portland? Well, I was in charge of the office branch as well as the terminal, and credit work, preparing all contracts, following collections, and daily reports. I had about eight, I believe, employees to supervise, a cashier, traffic manager, and clerks of various kinds.

Q. Did you have anything to do with the solicitation of business or the supervision of the solicitation of business?

A. Well, yes, off and on. I had my finger in that kind of work so long that I did a lot of outside work for Mr. Hutchinson.

Q. In 1943 you became branch manager, you testified?

A. That is right.

Q. What date in 1943?

A. I think it was March. I am not sure of the date.

Q. And how long did you hold that position?

A. Well, I think I went into real estate work in '46. I believe that was around March, also.

[fol. 1931] Q. What were your duties as branch manager in Portland?

A. Well, that relieved me of the terminal work more or less, and I took over the sales force, the salesmen and merchandisers, and directed their operations as well as the office operations through the chief clerk.

Q. Did you in that capacity have charge of all sales activities in that area?

A. In the city limits of Portland, yes.

Mr. Paradise: Will you speak a little louder, please, Mr. Bradford?

A. In the city limits of Portland, yes, I did.

By Mr. DeMartini:

Q. What authority did you have with respect to the closing of deals in connection with the amounts to be agreed upon, for instance, under paint contracts?

A. Well, I could only submit them, Mr. DeMartini, to Mr. Hutchinson, who in turn, if he did not approve some docu-

ment that I drew up, why, I would get it back and we would get together on it and send it in to the division office. We never signed anything there except just to sign it as having, as far as we were concerned, approved it, but not to execute the documents, we will say, to the deal.

Q. And who was Mr. Hutchinson at that time?

A. He was assistant division manager in charge of Oregon and Idaho.

[fol. 1932] Q. But I understand from what you have just said that Mr. Hutchinson did not have final authority in this regard?

A. No, he couldn't execute any papers in Portland.

Q. Did he have final authority on determining the amount of painting that Richfield would agree to do for a dealer?

A. Well, I could only answer that this way: Most of our paint requisitions cleared through Seattle all right. The ones that Mr. Kirby did not approve, he sent them back, and when he would come back to Portland the next trip, which was ordinarily every two or three weeks, why, we would bring those up and eventually, before the summer was over, we got most of the stations painted that we originally sent in.

Q. Then, as I understand it, in processing these agreements you would first transmit them to Mr. Hutchinson, who, if they met with his approval, would transmit them to Mr. Kirby, who, in turn had final approval, is that correct?

A. Yes. I had to sign the requisition and Hutchinson had to sign it, and then it went to Seattle for Mr. Kirby's approval.

Q. And Seattle had the final approval on these matters?

A. As far as I know, the division manager did.

[fol. 1933] Q. Now, referring to the subject of paint agreements in connection with the solicitation of 337 accounts, as I understand it, the paint agreement was used only with persons who were in business and with whom you negotiated for the sale of some products; is that correct?

A. That's right.

Q. It is true, is it not, that the painting of these dealers' stations results primarily from the desire and the insistence of the dealer?

A. Not necessarily.

Q. In other words, resorting to common vernacular you don't stuff it down their throats, do you?

A. No. It is pretty well set how often a station will be painted. The location of some station might be such it will look dirty in a year, and another station will go by two years, but I would say by mutual agreement we get along with the dealers fairly well on painting the stations ordinarily.

Q. The dealer does not pay for the painting of the station, does he?

A. No.

Q. The company pays for it?

A. Yes.

Q. And the dealer is interested in securing paint, isn't he, for his station?

[fol. 1934] A. Why, yes.

Q. So that in most cases the discussion with the dealer is as to the extent of the paint that he wants?

The Court: That, of course, is assuming, or that does not refer to the initial contract whereby he becomes a dealer in the first place, does it?

Mr. DeMartini: Yes, sir, that is the time to which I refer.

The Court: All right. I wanted to be sure that you are talking about the initial agreement and not subsequent renewals.

Mr. DeMartini: I am limiting this to the initial agreement.

The Court: To the initial agreement?

Mr. DeMartini: And the negotiation with the prospective purchaser of the products.

The Witness: I didn't understand that either.

The Court: So, you see, you are in good company, or, rather, I have good company.

The Witness: What was the question?

Mr. DeMartini: Will you read the question?

(The question was read as follows:

"Q. So that in most cases the discussion with the dealer is as to the extent of the paint that he wants?")

[fol. 1935] The Court: Remember that we are talking about the initial agreement whereby he puts on the Richfield colors.

The Witness: Well, of course, there are various types of buildings involved. It may be a grocery store with a couple of pumps out in front, and the fellow might negotiate with us, that if we will paint the grocery store we can have the account. In that case our answer invariably would be, "No."

We have had cases where they wanted us to paint a group of auto courts. The answer was, "No."

But a service station, yes. We would have no desire, naturally, to sell our products under Shell Oil colors, or any other oil company.

Mr. DeMartini: I move that that be stricken as a conclusion of the witness.

The Court: Which one?

Mr. DeMartini: His last statement.

The Court: The last statement may be stricken.

By Mr. DeMartini:

Q. So that it was constantly a matter of controversy between you and the prospective purchaser of the product as to how much paint he wanted?

A. No, it wasn't a controversy, ordinarily.

Q. Well, you just told me that in connection with a grocery store a man might want his whole grocery store painted, and you would tell him, "No." Isn't that correct? [fol. 1936] A. And we probably wouldn't get the account. That would be it.

Q. Would a man ever want gasoline, with two pumps in front of a grocery store, and where you insisted upon painting the whole grocery store?

A. Yes, sir.

Q. You insisted upon painting the grocery store?

A. You mean the dealer insist- upon it?

Q. No, you insisted.

A. Oh, no.

Q. So it was the dealer in each case that is insisting upon the greater amount of paint, and not the company?

A. Well, I know a grocery store. As I say, that is not

a service station operation. However, you get that kind of a deal once in a while.

Q. Let's take a service station operation where a man has a big super-unit, and a lot of garages, and things in the back, and walls on the side, would he normally request the painting of all of it?

A. Well, he requests it, yes.

Q. Well, does the subject come up as to whether you want to paint it all, or not?

A. Well, if that was painted white, you could talk him into painting the part that was serving, representing the service station, and let the rest of it go. If it was painted a neutral color, that is what I said a moment ago. You [fol. 1937] wouldn't necessarily have any controversy there, because his present supplier would paint it, the chances are, as much as we would. But he might be fixing to paint a lot of superbuildings, but our policy was, as far as I was concerned, the answer was, "No."

Q. Well, didn't the occasion often arise where you negotiated with the dealer, and the dealer said that he wanted a certain amount of painting done at the station, and you submitted that amount of painting to Mr. Hutchinson, and Mr. Hutchinson refused to approve it, and said, "We won't spend that much on painting that station"?

A. That's right.

Q. And isn't it true that in other instances Mr. Hutchinson approved it, and it was submitted to Mr. Kirby, and Mr. Kirby said he wouldn't approve that amount of painting at the present time at that station?

A. That's right.

Q. Then what would you do?

A. Well, you would go back to the dealer, and you might get the account, and you might not.

Q. In other words, you would——

A. You would compromise.

Q. You would go back to the dealer and say, "We will not do that much painting," isn't that correct?

A. That's right.

[fol. 1938] Q. So, to sum it all up, it was constantly a struggle between you and your dealer to limit the paint to as reasonable an amount as possible?

A. Not in strictly a service station unit, no. We would

paint the entire station, if we took the account, and no question.

Q. But it was constantly a matter of controversy as to the amount of paint that you would put on it?

A. Not necessarily.

The Court: As a good businessman looking out for the interests of the company, you saw to it that you didn't exceed what, in your opinion, was a necessary part of the job; is that it?

The Witness: That is true, your Honor. And, also, if the station was doing, we might say, a large gallonage, why, naturally, we would spend a lot more money.

The Court: You could afford to be more liberal?

The Witness: That's right. There is a lot of that enters into the sale, where you actually go out and spend the money.

The Court: Well, in reality, you are not in the business, to get down to brass tacks,—in reality, you are not in the business of selling paint or painting stations for others, are you?

The Witness: No, sir.

[fol. 1939] The Court: That was merely a supplement to your contract to sell them goods, to make sure that he has no other signs, that the station itself is painted with Richfield colors and that he had no other signs selling other products? Isn't that true?

The Witness: That is true, yes, sir.

By Mr. DeMartini:

Q. Now, in connection with the discussion with the dealer with respect to paint, weren't you also interested, in this instance in soliciting a new account, to sell him gasoline and other petroleum products, and isn't it also true that you were up against competition and that competitors were offering him to sell him their products and offering him certain paint?

A. Competition in the oil business was always present.

Q. And isn't it true that on frequent occasions, when you offered to paint certain facilities of the dealer prior to signing them up on a contract to sell them products, that he said, "Well, Standard Oil offered me more," or "Asso-

ciated offered me more, and unless you paint this wall, or this fence, or this extra canopy, why, I'll take their deal"?

A. That's true.

Q. On those occasions would you submit them to Mr. Hutchinson, who, in turn, would submit them to Mr. Kirby?

A. Well, I never passed on a deal like that myself. I would always submit that to Mr. Hutchinson.

[fol. 1940] Q. And sometimes they were approved, and sometimes they were disapproved?

A. Depending on their gallonage, yes.

Q. And when they were disapproved, what would you do?

A. We would just forget it.

Q. Did you ever go back to a dealer and tell him, "That is the best we can do"?

A. You could go back and tell him that was the best you could do, but if you couldn't get together on it, you might just as well forget it.

Q. And frequently he would sign up with another company to sell their gasoline?

A. He might not change his present supplier. He might just be fishing for a lot of paint.

Q. In other words, he was always fishing for extra paint, wasn't he?

A. Not necessarily. He might be, I said.

Q. In many instances he was, wasn't he?

A. In some instances. Where he had nothing but his station building, and another company would object to painting it, he certainly would not have any fishing to do.

Q. Now, do you recall any instances in which Richfield refused to execute a 337 contract because the dealer wouldn't sign a paint agreement?

A. Because he wouldn't sign a paint agreement?

Q. Yes.

A. Yes, I can recall one in particular.

[fol. 1941] Q. Well, will you give us the circumstances, Mr. Bradford?

A. I had our agent in La Grande, Oregon at what we considered a nice outlet there on the highway. He had about 12 cabins which had been painted Richfield, but when I was in the territory we wanted to renew the sales on paint and, of course, the question came up of painting the cabins. I told him that I would submit it, because I did not have the

authority to pass upon it, but I was satisfied it would never be approved, and it was not.

Q. No, that is not the type of instance I mean. I was referring to back instances where there was a controversy as to the amount of paint. I mean did you ever have an instance where you refused to sign a contract to sell a man products, that is, sign a 337 sales contract, because the dealer would not sign a paint agreement?

A. Well, in other words, if I get your question correctly, whether we entered into an agreement with a dealer on a sales contract and no paint contract?

Q. That is correct.

A. No, I don't believe I recall any of those.

Q. You remember no instances during the entire time that you were branch manager at Portland that that did happen?

A. No, I don't remember any case like that. I don't think we had an existing sales contract without a paint contract [fol. 1942] in the whole territory.

Q. You are sure of that?

A. Positive.

Q. Did you ever recall any instance where the dealer wanted a service station painted in neutral colors?

A. Yes.

Q. Colors other than Richfield, and that Richfield did paint that service station in those colors?

A. It did.

Q. That did occur?

A. Yes.

Q. In how many instances did that occur?

A. The Kawalski deal, a large super-service deal out on Lombard, was painted white.

Q. So if it was a good enough account and insisted upon his station being painted in neutral colors, because of the size of the business involved Richfield would bow to his wishes on that score, is that correct?

A. They have. The- did in that case.

The Court: But the signs displayed were still Richfield?

The Witness: The signs were Richfield. The ridge sign was Richfield and the pumps were our colors, but the building was white, a very unusual setup.

By Mr. DeMartini:

Q. Now, you stated in this solicitation of new accounts [fol. 1943] and in negotiation with the dealer, and in order to get approval for a paint agreement, you would insist that the dealer take down certain competitors' signs and that you would take pictures in that regard, is that correct?

A. Took down all competitive signs before I took the photographs, yes.

Q. And what would you do with that photograph?

A. Attach it to the original paint requisition that went along with it to Seattle.

Q. Then that would be forwarded to Seattle in connection with the approval of the paint requisition, is that correct?

A. That is right. It was stapled to the paint requisition itself.

Q. In connection with the taking down of those signs did you simultaneously insist upon the dealer agreeing to take out all the competitive products that were represented by those signs?

A. No.

Q. He would continue to sell the competitive products that he had in his station at that time?

A. Yes, he would. If he felt so inclined, he would.

Q. And suppose the man refused to take down a competitive sign, what would you do?

A. I never had one of them refuse.

[fol. 1944] Q. You never had one refuse in all instances?

A. No.

The Court: I gather from what you told us before that when you asked him to remove for the purposes of taking the pictures, that he knew it was temporary only, that you wanted it only for the picture and that he might restore it later on after the painting had gone through, or did I get the wrong impression?

The Witness: The actual operation there, your Honor, when I would walk to the station with a paint requisition I would not go to the dealer at all. I would go in the back part of the lot and start writing up my paint requisition. When I would look up in the operation, somewhere along the way, I might see the signs disappearing behind the

building, because these fellows knew I would not take a photograph of those signs out there, anyway.

The Court: They knew what you were aiming at, is that it?

The Witness: That is right, and they had been through it before, I would say.

By Mr. DeMartini:

Q. Who was that who would take the signs down? I did not hear you, Mr. Bradford.

A. The dealer would.

Q. And sometimes your own salesman would?

A. No, I wouldn't say that. As far as I know, I never [fol. 1945] touched a competitor's sign myself.

Q. But your salesmen who were working on the negotiation of this deal would induce the dealer to take down the sign, is that correct?

A. You are talking about a new account?

Q. That is correct, a new account.

A. Well, on a new account we would not be too much concerned about the signs on a new account. We would not be too much concerned about taking the sign down. It was still someone else's colors. We would assume that would all be changed when our painters went up there, he would remove those signs, and the sign might belong to a competitive oil company.

Q. So, then, the removal of signs was only in those cases where you wanted to get an approval for a repaint job on an existing account?

A. I would say so, yes.

Q. And you would have the dealer remove the sign so that you could send to your superior a photograph of the station showing no competitive products?

A. That is right.

Q. Is that correct?

A. Yes, sir.

Q. But you made no effort to get the dealer to remove the competitive products that were represented by those signs?

A. I understood your question, you asked me if I insisted [fol. 1946] upon it. I said, "No," but at that time that was the chance for me as a branch manager to do what I could in removing the competitive oil. Mind you, if I could have

gotten him to take it out—and I doubt if there was very few times that I ever went through the territory on a paint requisition job, that I did not ask these dealers to get all of it out of there. But whether he got it out, again, or not, that is a different thing.

Q. Well, as a good salesman you were trying to sell as much of our products as you could, isn't that correct?

A. Yes, sir.

Q. So at the time when you repainted the station, that was a good time to negotiate with him for the selling of Richfield products?

A. That is the best crack that I had at him, yes, as a branch manager.

Q. So that, going back now to the negotiation of a contract with a dealer to whom you had not sold before, then this practice of removing signs before you got approval from your superior for the painting of the station was not indulged in, is that correct?

A. Well, there would be no use to take those signs down. Chances are, if Mr. Hutchinson and perhaps Mr. Kirby would sit across the street with me in the automobile and look at the station. I would not be able to—there would [fol. 1947] be no sense in stripping a station with competitive colors and competitive signs when we were going to take it over. That was a job when we got through painting it, what it was going to look like. That is what we were interested in.

Q. And in negotiation with these accounts for the sale of products under a 337 contract you made an effort to sell them as much products as you could, did you not?

A. You mean 100 per cent basis, near a 100 per cent basis?

Q. Well, as much as you could. I don't know what basis.

A. Well, the quantity would depend on what he could sell. We would approach the 100 per cent basis as near as we could, yes.

Q. But you would never refuse to take on an account who said that he wanted to handle competitive oils?

A. Well, I never did, I don't believe.

Q. And the same is true of competitive TBA's?

A. That is right.

Q. I will ask you if you did not state if after you signed

up an account and the painting was done and the account put in competitive products, we would collect on the paint agreement. You did not mean by that, that after you had painted the station and signed up a 337 dealer on a 337 contract and he had put in, let us say Hy-Vis or Pennzoil [fol. 1948] that he did not have in before, that you would collect on the paint agreement, do you?

A. Speaking strictly of gasoline.

Q. You had no reference to competitive lube oils?

A. No.

Q. And the same is true as to TBA, if he put in competitive TBA that he did not have in before, you did not mean by that statement that you would collect on that paint agreement under those circumstances, did you?

A. No. I meant by that statement if we lost the account.

Q. What you meant by that statement, if I understand, then, is that when the account, prior to the expiration of a sales contract, completely displaced our gasoline by putting in other gasoline, is that correct?

A. Well, we would say he broke the sales agreement and put in a competitive product in the pumps, and the pumps were repainted, whether the building was repainted or not. The place was painted competitive colors and we went out of the station completely.

Q. What would he do under those circumstances? I don't quite follow you on that, Mr. Bradford.

A. Well, as I say, some competitor might come in and take over, which they did take over one of your dealer accounts, and the paint job, we certainly billed him and did [fol. 1949] bill him on the paint that was on the station. That was part of the agreement.

Q. Isn't it true that the paint agreement that you referred to provided that we could collect on the painting agreement provided that he defaulted in the sales contract? Isn't that correct?

A. If he broke the contract and got himself a new supplier.

Q. Isn't it also true that under the circumstances, before you could recover on the paint contract, you had to serve him with a notice of default? Wasn't that a practice of the company?

A. Well, I would say that is true.

Q. At that time during your tenure as branch manager of Portland——

It is unfortunate, your Honor, that these do not show the print dates too well in the photostats.

I will show you a contract which is marked Government's Exhibit 5-B and ask you if that was not the form of 337 sales contract that you used during your tenure as branch manager?

A. Well, I would think so.

Q. Maybe this will be a simpler question for you to answer, Mr. Bradford. It is true that the first paragraph of that contract provided as to the minimum and maximum purchase requirements thereunder that they would be [fol. 1950] measured on a yearly basis, isn't that correct?

A. That is right. You put the yearly figure in there, arriving at it by the month.

Q. You have further testified that it was your understanding that we could not collect under the paint contract unless there was a default under the sales contract.

A. That is right.

Q. Isn't it also true that before we made any attempt to recover under the sales contract it was determined whether the dealer purchased his yearly contract requirements prior to the date of his default so that he was actually in default? Let me give it to you by a hypothetical question. Suppose the minimum requirements under the contract which is dated January 1st is 8,000 gallons and he defaults in, say, November, at which time he has bought 8,500 gallons. Under those circumstances we could not collect under the paint contract?

A. Well, Mr. DeMartini, the only connection I would have in collecting on a defaulted paint contract is whatever the statement was that was forwarded to be by the division office. I had nothing to say about the amount or anything else. If they wanted to collect, they sent the bill. If they didn't want to collect, I didn't get one. That is as far as I know.

Q. You, then, had no control of the policy of the com-

pany with respect to collecting under those paint contracts, did you?

[fol. 1951] A. Not as far as the policy is concerned, no.

Q. And you do not know under what circumstances they did or did not collect?

A. No, not necessarily.

Q. Do you know of any specific instances on which they did collect?

A. Not in Portland.

Q. Do you know of any instances in Portland where a dealer had defaulted in his contract and a competitive supplier had taken over the station?

A. During my branch managership in Portland we did not lose an independent station that was painted. You understand, you might have a one-pump in a parking lot where there would be no painting involved except the pump. There was no paint agreement with that. I was talking strictly of buildings, and while I was branch manager in Portland I am positive we did not lose an independent or a dealer account that involved a paint contract, to the best of my recollection.

Q. And was that also true during the period that you were office manager in Portland?

A. Well, I wouldn't say for sure on that.

Q. Then you do not know of your own knowledge whether Richfield ever collected under any of these paint contracts?

A. I have collected on a couple down here in the south-

[fol. 1952] ern division.

Q. What were the circumstances under which you collected on those?

A. Well, in those days we lost accounts right and left.

Q. Pardon me. What time are you speaking of now, Mr. Bradford?

A. Well, I would say prior to 1935.

Q. Well, please do not answer anything prior to 1937.

A. Well, that is what I say. That is what I say.

Q. Did it ever occur during the time that you were branch manager at Portland that an independent account with whom you had a contract to sell gasoline displaced your gasoline in less than all of the pumps?

A. No.

Q. Now referring back to the matter of the painting of an account, that is, the repainting of the station of an account which was currently under contract on which you were attempting to renew, it is true that frequently immediately after the painting of the station the competitive signs they removed were put up again, isn't that correct?

A. Well, not necessarily. If the signs were carried around to the back of the building and put out of sight, the chances are the dealer would let it remain there until the competitive oil salesman came along and hung it back up again.

[fol. 1953] Q. Then when the competitive oil salesman came around he usually made an effort to display his products again and to induce the dealer to put them up?

A. I would say he would get his sign back up.

The Court: A tug of war, was it?

The Witness: More or less.

By Mr. DeMartini:

Q. Now, I change to a different subject, Mr. Bradford, and that is the matter of fixing of the quantities in the sales contracts. You testified that the quantity was fixed in your office, is that correct?

A. Yes. We drew up the sales contract in the branch office.

Q. Where did you get the information from which you drew up the contract?

A. Off the gallonage cards.

Q. Let us take a competitive station that you were taking on. This is a new station and you have negotiated the deal now and you are going to close it and you are going to prepare the contract and you are going to insert the figures. You are considering now the minimum figure that the dealer is required to purchase.

A. We would get that from the service station records.

Q. Whose records?

A. The operator's, the dealer's.

Q. Would he always show them to you?

A. I would say so, yes. If he was going to Richfield,

[fol. 1954] he would not have any hesitation showing us his gallonage figures.

Q. Why would he show you those figures?

A. Well, for various reasons. In the first place, you don't send a sales contract in to the division manager and say, "Here's a service station"—period. You have to send in some information on why you want to take that account and what is your best estimate of the gallonage. And if you know what the gallonage is, why, you have got definite figures for the division manager. He has to execute the paper and you have to go into the gallonage potential. We always hope it would be more than the fellow was doing already. Sometimes we sold them on that basis to the division manager.

Q. Suppose he would not give you any figures, what would you do? Suppose it was a good account and he says, "Well, I am not interested in giving you any figures on what business I have done," what would you do then?

A. Well, I don't think I ever had one like that.

Q. Now, you fixed this quantity in the contract without any consultation with the dealer at all?

A. Yes, the contract to be drawn up in the branch and taken out to him, and he could read it or not read it. That was left entirely up to him. He was handed it. You handed it to him and if he wanted to go over the gallonage figures, but the gallonage figures in my operation in the Portland area did not mean too much for the simple [fol. 1955] fact that we were in war with a definite quota on the branch, and we had to allocate the gasoline the best we could. And we didn't pay much attention to gallonage figures on the sales contract. Uncle Sam wouldn't let us have the gasoline, anyway.

Q. In determining those figures during the war period didn't you have to give consideration to certain allocations that the station might have at that time?

A. Well, the quotas of individual stations were set by the division manager's clerk in Seattle, and we got the quotas on those individual stations, station by station, as your quota on station so and so for the month of March, ahead, so many gallons.

[fol. 1956] Q. Do you know how those quotas were fixed?

A. No, I don't know how they were fixed, except they were just broken down from the branch quota, and it was fixed as against the gallonage the station was doing. If a man was doing twice the gallonage of another station, why, I would say his quota would be twice the other fellow's quota.

Q. Well, that was during the period the Petroleum Administrator for War had control of the operations generally of the oil industry, wasn't it?

A. I would say so.

Q. And these quotas were fixed in accordance with a formula that was fixed by the Petroleum Administrator; isn't that correct?

A. Yes, I would say so.

Q. So that you didn't have much discretion with respect to those figures in the war period?

A. Well, my statement was that the figures on the sales contracts didn't mean much, no.

Q. Now, let's take the period subsequent to the war, where they did mean something. Did your tenure as branch manager end prior to the expiration of the wartime control?

A. No, I was branch manager on V-J Day. No, I was moved into real estate work subsequent to the war. The war had ended.

[fol. 1957] Q. When you fixed these quotas, didn't you ever have any discussions with the dealers at all?

A. The only discussion was that the dealer always wanted some more gas than his quota called for.

Q. The dealer always asked for a higher figure than in the contract?

A. I am going by the quota sent down by the division office, not by the contract.

Q. And that quota was fixed in accordance with what the clerk had computed would be allowable by the Petroleum Administrator; is that correct?

A. That's right. We could make some variation in that. You would never hit it right on the nose, of course, but we were very, very closely watched.

Q. Well, you testified, however, that you sat down in the office and when you had a figure of 10,600 as past experi-

ence, you rounded it out to 11,000. I can't make that statement coincide with what you are stating now, Mr. Bradford.

A. Well, are you talking about the figure in the sales contract, or the figure he actually bought, or the quota established by the federal——

Q. I am talking about the figures in the sales contract. That is all we have been talking abo t.

A. The only quota I have been talking about is putting [fol. 1958] it in round figures. There is no use pushing it down to the lower figure, so you put it in round figures.

Q. Where would you get the figure of 10,600 you mentioned?

A. You are talking about a new account?

Q. A new account.

A. Something we are just taking on?

Q. Yes.

A. Well, I would get that from the dealer, and my best judgment of what that station would do, that is, my estimate. That is how I sold that deal to the division manager. I was open to severe criticism if I sent him in a sales contract which called for an expensive paint job, and I estimated 10,000 gallons and the account would run three. In fact, I wouldn't do that.

Q. So that the paint contract was based upon the estimate of the gallonage that the station would do; isn't that correct?

A. That's right.

Q. Now, wasn't it a common practice in the industry for the dealer to advise you of gallonage figures in excess of those that he was doing, for the purpose of getting a better paint contract?

A. No, I wouldn't say so, no.

Q. That has never occurred?

[fol. 1959] A. Not to my knowledge.

Q. You would say that was not a practice in the industry, after having been three years as manager in Portland?

A. To me—— I am not saying anything about the practice, but I don't think in my recollection—I am sure no

dealer ever gave me any phony figures or gallonage figures, if he didn't have them. The dealer might be new in the station, too, and we took over closed stations, stations that had been closed, competitive stations. That way it was strictly guesswork what the dealer thought he could go, and what I thought he could do, and so on, on what Mr. Hutchinson thought he could do. That is the figure we put in there.

Q. The dealer would always guess high, wouldn't he?

A. Well, his guess was no better than anybody else's.

Q. Well, he was interested in getting as much paint as he could, wasn't he, Mr. Bradford?

A. Yes.

Mr. Dixon: If the court please, I think there have been a lot of these questions that are both leading and calling for conclusions. We have no objection if your Honor wants to listen, but we do think——

Mr. DeMartini: This is cross examination, counsel.

The Court: Yes. However, this estimate of the gallon-[fol. 1960] age, with your dealer in a new account, that was based upon your own knowledge and the prospective dealer's knowledge of what could be done in that neighborhood with that station; isn't that correct?

The Witness: Conscientiously, your Honor, yes, to the best of your knowledge, what that station could do. There wasn't any attempt made to fool anyone.

The Court: And if there had been a station there that was operated and was closed, why, of course, you had a source of information if the man you were dealing with was not the man who had operated the station that was closed?

The Witness: Your location then would be the main thing you would base it on, and, of course, a one-way street, or something like that, would affect it.

By Mr. DeMartini:

Q. You would prepare this contract in your office and insert the figures in the contract, Mr. Bradford?

A. It would be prepared in the branch office and taken to the dealer for his signature. When we sent it to Seattle, the dealer would have signed it.

Q. When you take it to the dealer for signature, didn't he at any time object to the quantities that were specified in the contract?

A. No.

Q. At no time?

[fol. 1961] A. Not while I was branch manager in Portland, no.

Q. So that every time you took a contract to the dealer, in which you had inserted quantitative figures in the 337 sales contract, he signed it without dispute?

A. That's right.

Q. You didn't always——

The Court: Pardon me. In all of those, you weren't figuring only on past performance, you were basing it on hope on the future, weren't you?

The Witness: Well, we always did, yes.

The Court: Portland has had great growth. I was there in March. In fact, they are very nice people up there. We lost our dog there, and found him afterward. Somebody picked him up. He had started back for Los Angeles, and he was picked up seven miles south of Portland. We put an ad in the Oregonian which brought him back.

Also, I was educated in Oregon. I am a graduate of Willamette University, so I have affection for that state. But the entire state has grown very much in population, even more so than California in the last 10 years. 48 per cent, isn't it?

The Witness: It has had a tremendous increase.

The Court: And that was the time when these contracts were made, when you were cashing in on the war products, and you even built up a new town there. What is it called,—— Van Port?

[fol. 1962] The Witness: Van Port. That washed away in the flood.

The Court: What is that?

The Witness: That washed away in the flood.

The Court: Yes, it washed away in the flood. As I remember the type of buildings it had, it was a good riddance. It was rather tough on the people.

The Witness: That's right. But, your Honor, I might add that that gallonage figure was a year's figure, and

although he might start off on maybe half the monthly gallonage to make that figure, but he might wind up at the end of the year with enough over to come pretty close to that figure.

The Court: All right. As I remember, there was no penalty attached to the contract,——

The Witness: No.

The Court: —to the supply contract if it did not come up to the gallonage?

The Witness: That was not a default of the contractor, so far as I have ever known, if he didn't buy his minimum, no.

The Court: All right. And the allowances you made to him, or the discounts, which ever way they went, did not depend on that amount of the gallonage?

The Witness: Well, yes, in some instances. You had a letter of a cent a gallon, which is in addition to the sales [fol. 1963] contract. We stuck in Portland to the one cent, and while I was branch manager, we had the one cent extra margin to practically all of our dealer accounts. That gave him five cents off instead of four, which he got off a tank wagon. So there was another document went with the contract.

The Court: I see.

By Mr. DeMartini:

Q. That would be another reason for the dealer liking to show a large gallonage at the time you negotiated the contract, wasn't it?

A. No. If he didn't buy the gas, he wouldn't benefit by the cent.

Q. He would not benefit by the cent?

A. Only on what he bought.

Q. On what he bought. But you stated that in the negotiation of the contract the amount he would get depended upon his gallonage, so if he was only doing 2,000 gallons, you wouldn't give him the cent, would you? But if he was doing 6,000, you might give it to him?

A. I see what you mean.

The Court: He said that this morning. But am I not to understand from what you just said that, regardless of the gallonage that you gave him, that was extra in your

district during the time you were there? Or did I misunderstand?

The Witness: Well, a pump in a parking lot, or something like that,——

[fol. 1964] The Court: That isn't the point. We are talking about regular stations.

The Witness: Yes, the bulk accounts. I think all our dealer accounts, that would qualify as a dealer account, a service station account, were on five cents.

The Court: You wouldn't have a pump on a lot except away out on the outskirts, across the river?

The Witness: Well, in a parking lot downtown you might have one.

The Court: You might have one.

The Witness: But they wouldn't do much because the parking lot——

The Court: Oh, yes, I remember one. You see, I have sat in your Federal Court. Where is that? On 6th Street, isn't it?

The Witness: Yes.

The Court: There is one between the Federal Court House, and what is the name of that hotel?

The Witness: The Benson?

The Court: No. The St. Andrews Hotel.

The Witness: Oh, yes.

The Court: Do you remember where that is?

The Witness: Yes.

The Court: There is one on one of the lots right adjoining it. That was a parking lot.

[fol. 1965] The Witness: We had a few, yes.

The Court: Having been a roving judge, gentlemen, I have an advantage, you know. In fact, one of your witnesses came and brought me greetings from the marshal in Portland. So I have been a roving reporter or judge for all these years. I started moving around when I became a judge. Judge Wilbur said as I was the youngest, he was expecting me to start in to learn the business in other districts, as well as in my own. I have always enjoyed it, because they are always very interesting questions. I have even tried anti-trust cases away from home. That is the one you lost.

Mr. Dixon: We won't mention that, Judge.

Mr. DeMartini: I just credited him with not losing any.

The Court: Oh, don't do that. He lost some. I did the worst thing a judge can do to a lawyer, you know. I didn't even let it go to a jury.

He had a criminal case there. That is the famous case against the San Francisco contractors, where they indicted the San Francisco electrical contractors and two big unions. We even had as a defendant there Bill Tracy, who is the head of the big electrical union, and at that time was Assistant Secretary of Labor. I didn't let them get to the jury. I took it away from the jury after 12 days.

Well, we will stop visiting and go on now.

By Mr. DeMartini:

Q. I believe you have already stated this, but the rela- [fol. 1966] tionship between Richfield and these 337 dealers was one of vendor and purchaser, was it not? You were trying to sell them the products? It was a salesman's proposition, was it not?

Mr. Somerville: I will object to that, your Honor.

The Court: Oh, that is all right. He has explained that his main object, of course, was to have outlets for his products, and the other things were a means to achieving that; isn't that true?

The Witness: Yes, sir.

By Mr. DeMartini:

Q. It was a matter of dealing with the competition, to sell them oils, for instance, in competition with, oh, take Pennzoil or Quaker State. You are trying to sell these dealers as against those salesmen; isn't that correct?

A. Those accounts, you might say, were handled by salesmen. Merchandisers had nothing to do with it. They were handled by Richfield salesmen.

Q. And your salesmen were encouraged and instructed to go out and sell these men as much as they could; isn't that correct?

A. Well, he wouldn't show too well on his month-end report if he didn't keep working on that all the time. He would eventually get away from the oils and greases.

Q. Did you have a quota on that, Mr. Bradford?

[fol. 1967] A. Yes, we had a quota, but it was like other quotas. If you didn't make it, there was nothing drastic happened to you. They were quotas that we shot at. They were always high enough under Mr. Hutchinson.

Q. You went somewhat into your duties and practices in connection with your next employment, which I believe you stated was—what was it—a real estate representative? What did you call it?

A. I was on the pay roll and my title was real estate representative. My duties were branded that way, anyway.

Q. From whom did you get your instructions with respect to that employment?

A. You mean after I was on that job?

Q. Yes.

A. Well, by work went clear to Mr. Jones, the president. I would go out and find locations, and Mr. Dinkins might come upon one case, or Mr. King, or Charlie Jones might come up. Mr. Sinclair, I never did have the pleasure of steering him around the territory, but Mr. Jones approved a few deals of mine right there on the spot.

So I was working under the supervision there of Mr. Kirby, but they tried to approve those deals from my survey, which was quite an elaborate set of papers, but oftentimes they would hold those and they would come up to Portland, and we would meet and get in the company Buick and drive all day, and they would approve the deals [fol. 1968] right there.

Q. And your duties consisted of acquiring properties by purchase and by lease; is that correct?

A. Primarily at that time by purchase. As far as I am concerned, I might answer, Mr. DeMartini, that the pressure was, you might say, on to buy all these corners that we could buy, and I didn't have time to work on leases. It wasn't that I wasn't supposed to, but I couldn't do all of that. That had to come later.

Q. By "all these corners" do you mean corners which we currently then had under lease?

A. No, not necessarily. This was—we bought some of those, but Mr. Hutchinson and I, we first started out in the city of Portland and would go up one street and down

another street, and where we wanted a service station, we would put a red circle, and then Mr. Hutchinson would leave me, and I would take off by myself and endeavor to get a location inside that circle. The thought was to stagger the stations on up the street so, say, on Hawthorne Boulevard if we found a good position and had a station on the left-hand side of the street, so many blocks away we would have another on the right-hand side, and so many blocks away on the left-hand side, and so on. That was the program.

[fol. 1969] Q. Can you fix the period this took place, Mr. Bradford?

A. Well, I was working at that when I resigned in December of '47.

Q. That was from about March of '46 to December of '47; is that correct?

A. Well, I don't have my file here, of course, and I am only——

Q. That is approximate?

A. Yes, it is approximate. I don't have those dates fixed in my mind.

The Court: When you resigned, did you go into some other business? I have forgotten about that.

The Witness: Well, I got all steamed up over the real estate business, and I have been in that ever since.

The Court: In the real estate business?

The Witness: Yes, sir.

The Court: In Portland?

The Witness: I am in Medford now. I was in Portland.

By Mr. DeMartini:

Q. If I understand you correctly, your activities would consist of attempting to develop for the purchasing by the company properties that were within the red circle area that you just described?

A. Yes. That might be a vacant lot, it might be an apartment house, it might be an existing competitive service station, or it might be a Richfield service station. The [fol. 1970] main thing was to see that in the picture, that we wanted a station there.

Q. And you would develop these deals and then submit

them on the best basis on which you could develop them; is that correct?

A. The best basis I could get them on, yes, and then I would take an option for 60 days, and I would pay a whole dollar on it.

Q. I think that was always it?

A. Yes.

Q. You also stated that you had more of these deals than you could handle at that time, that it was something that was very active, those activities of acquiring properties; is that correct?

A. I had the whole state of Oregon and Idaho. I never did get to Idaho, but they subsequently put in two boys to help me, a boy named MacDougal and a man named Getchell, so there was three of us.

The Court: Was this a special program of expansion that the company had undertaken at that time?

The Witness: Yes. I could give you the figure that we were told we had to expand, if it is permissible here. We were told that there was $25,000,000 set aside for expansion, and another 25,000,000 when that was spent.

[fol. 1971] The Court: I see.

By Mr. DeMartini:

Q. And part of the program was the leasing of existing service stations; is that correct?

A. When I was in real estate?

Q. Yes.

A. Well, it was a case, Mr. DeMartini, where someone else had to handle that. I was not in a position to. Of course, we had other representatives, too, in the territory I was covering, and someone else had to handle leases. I wasn't able to. In getting the deals scattered all over Oregon, there was no way I could be working leases.

Q. Well, during all of the time that you were branch manager or that you were real estate man, you did negotiate leases for service station properties, did you not?

A. Yes. I renewed, I would say, two or three existing leases during my branch managership. I don't think I wrote a new lease.

Q. Well, during the period from 1946 to the end of your

employment, do you know the basis upon which leases of ground were being secured by the company, that is, bare ground?

A. Bare ground?

Q. Yes.

A. Well, on the bare ground, to the best of my knowledge, they would not go on a rental over one cent a gallon and [fol. 1972] improve a piece of bare ground.

Q. That is for bare ground?

A. Yes.

Q. Then if the company leased the bare ground, of course, to make the property productive a service station would have to be built thereon; is that correct?

A. Well, the cost of the service station just about trebled, and it had to be a pretty good spot to lease. They would much rather buy it.

Q. Did you have any experience in leasing properties that were already improved as service stations?

A. No, I never did take a competitive account or a lease on an L-O unit while I was branch manager, as I recall.

Q. Well, with your experience as being in real estate and as branch manager, you would say that it would be extremely unlikely that you could lease a going station at any time since 1946 at a rental of one cent a gallon; is that not true?

A. Well, yes, I would say yes. That is absolutely correct on a cent a gallon. You wouldn't get it.

Q. What would you say the prevailing rate on a going station would be?

A. Well, a cent and a half. Of course, your minimum guarantee enters into that, too.

[fol. 1973] Q. There was usually a minimum guarantee also?

A. If the minimum guarantee was high enough, why, perhaps you could get a station on a cent and a half, but you would have a very hard time if the minimum guarantee was low at that rate.

Q. In other words, it would be even in excess of a cent and a half?

A. It could be. Well, I don't know of any case where Richfield ever approved a lease over a cent and a half.

Q. But you did approve many with high minimum rentals?

A. Well, I don't know what you mean by high minimum rentals, but then there was a figure in it, not $10, yes.

[fol. 1974] Mr. DeMartini: Pardon me.

The Court: All right.

Mr. DeMartini: One further series of questions, your Honor. It will be very short.

Q. As branch manager, you had some contact with the L-O stations, did you not, Mr. Bradford?

A. Oh, yes.

Q. And you were generally familiar with the rents chargeable to the L-O station operators?

A. Yes.

Q. And I believe you testified that the company attempted to procure a cent a gallon rentals, isn't that correct?

A. From the operator, yes.

Q. Isn't it also true that during the period of emergency stress, especially during the war years, that these rentals were greatly reduced?

A. I believe we had some there at a dollar a month to keep the station open. Some of the oil companies closed them and we kept ours open. We did not close the station.

Mr. DeMartini: That is all.

The Court: Any redirect?

Mr. Somerville: Yes, sir.

The Court: You are giving Mr. Bradford a work-out. I don't think he will like California.

[fol. 1975] Mr. Somerville: I think he does. He tells me he spent some time here.

Redirect examination.

By Mr. Somerville:

Q. During the periods when the lease in some instances might have been at a nominal figure, that is, the rent that the L-O operator would pay, would there be some effort to get an adjustment on the rental paid by Richfield to the property owner?

A. Well, my answer to that, Mr. Somerville, that Mr. Hutchinson did an outstanding job on reducing rents from the lessor. I imagine he—well, he did an outstanding job on getting rent reductions.

Q. Well, do I understand your answer, then, that you did get adjustments on the rent?

A. Oh, yes.

Q. From the lessor to Richfield?

A. That is right.

Q. In places where either war time conditions or competitive conditions seemed to require a reduction?

A. Well, in war time conditions, not competitive conditions.

Q. Were there some leases from property owners to Richfield where the rental was fixed on a straight gallonage basis without any minimum being fixed?

[fol. 1976] A. It would be a rare case. There might have been one or two in Portland. I couldn't recall offhand, but it would be a rare case.

Q. Going back to the beginning here, to the paint requisitions, you have testified that you would send a picture in with the paint requisition and not showing any signs. Did you ever have an occasion when a picture may have showed a competitive sign which was later called to your attention by Mr. Kirby or Mr. Hutchinson?

A. Well, on a renewal, yes, we have, where you would have a Pennzoil permanent sign attached. Most of those would be a long, narrow sign over the lube room door attached to the building. We have had that go in with the sign on there. We didn't go in and tear signs loose from the building, but we have had a case or two where that sign, the picture has gone in with that sign up there, but it was common knowledge that they had the Pennzoil lubrication, anyway.

Q. Would Kirby tell you anything, would he instruct you to get rid of the sign or would he deny the requisition on that ground?

A. Well, no. The one I have in mind is Sixth and Columbia across from the New Oregonian Building that one of our former salesmen, Brown, opened that up as a closed competitive unit and he had a Pennzoil sign above the

lube room door, and we knew when he took it that he was not going to switch to Richfield lubrication. I know with [fol. 1977] that one, that picture went in with that sign up there. But as far as coming back to me because the sign was up there, no, that showed in the photograph.

Q. Was there some policy directing you in any discussions with Mr. Kirby concerning not having competitive signs on the property?

Mr. DeMartini: I will object to this, your Honor.

The Court: This is not rebuttal. I will sustain the objection.

By Mr. Somerville:

Q. In some instances you would acquire a station under a paint and sales contract that had formerly been operating under the colors of some other oil company, is that true?

A. That we would acquire one?

Q. Would there be instances in which you would acquire a new outlet on a paint and sales contract, an existing outlet, that had previously sold gasoline of some other company?

A. Well, there was not much of that because, you understand, the first thing we had to do when we took a new account, you had to be assured by the division manager that the quota could be warped around so that you would have something to supply him with. You would have to get an increase in your quota. Naturally, you were not just out taking stations right and left. There were stations [fol. 1978] closed for that reason, and you would get involved in a quota there, and the division manager take that station with a sales and paint, why, he would have to produce gasoline some place. We had some of that, but not much.

Q. Now, in your general instructions to dealers you were asking to paint, did you ever convey to them the idea that the paint requisition might not be allowed if competitive signs remained on the property?

Mr. Paradise: I will object to this, if the court please.

Mr. Somerville: I am talking about the general practice.

The Court: Oh, well, that is already gone into. You

started on that this morning at 10:00 o'clock. It is now 3:00. You are not starting that over again. I will sustain the objection. He has already told us what he said and what he expected, that is enough. You do not have to have the last say, you know that. You are not a woman. You are only a lawyer.

By Mr. Somerville:

Q. Do you happen to know, Mr. Bradford, what the purpose of the five-day termination clause was in these sales agreements?

A. What the purpose was?

Q. Yes.

A. Well, it was the privilege of terminating.

Q. Do you know under what circumstances such terminations would be effected?

[fol. 1979] Mr. Paradise: I object to that for lack of foundation as well as improper redirect.

The Court: I will sustain that. We have gone into these. He has told us what the practices were. You do not have to go over it again. That is what happens when you keep a witness on the bench for a long time. You forget where you started and start all over again. Fortunately I have got a very good memory, you see. So let us limit ourselves to real redirect on new matter that was brought out by Mr. DeMartini.

Mr. Somerville: Just one or two more questions.

The Court: I timed you yesterday. You said you had two and you had 12. You say some additional questions.

By Mr. Somerville:

Q. Mr. DeMartini in speaking of the gallonage maximum and minimum quantities referred to what the station would do. The estimates of the maximum and minimum quantities were based on the premise the dealer would buy all of his gasoline from Richfield?

A. Yes.

Mr. DeMartini: I just want one question, your Honor.

The Court: Wait a minute. He is not through yet. Let us give him a chance.

Mr. DeMartini: I thought he was through.

By Mr. Somerville:

Q. Do you know of any circumstances in which they did [fol. 1980] not buy all of their gasoline from Richfield under the sales contract?

A. I don't know of any that they did not buy it all openly, but I don't think we had better get into the proposition of spiking tanks because I couldn't prove it, anyway.

The Court: All right.

By Mr. Somerville:

Q. In renegotiating a sales contract in the sense that it would be a continuation of the same dealer after the expiration of the term of a former sales contract would you consider the gallonage as of that time in figuring the maximum and minimum figures?

A. Well, that is a yearly figure and you would take his last year's figure or, if you had a five-year period, you could use the five-year period.

The Court: He answered that a while ago, when he said that after the first year, in view of the fact that the supply agreement was a yearly agreement, then when it came to renewing it you had a basis to go on. What he had actually done at the station, isn't that it?

The Witness: That is right.

Mr. Somerville: I am sorry. I just wanted to clarify that and point out that it was not based on war time allocations.

The Court: Oh, that is all right.

[fol. 1981] Recross-examination.

By Mr. DeMartini:

Q. You spoke of the program of securing reductions of rent from land owners on service stations.

A. Yes.

Q. That was a war time program, wasn't it, Mr. Bradford?

A. Certainly.

Q. You know of no circumstances where the rent from

the land owner was reduced to a figure such as a dollar month?

A. I don't, no.

The Court: That system began back in 1942?

The Witness: That is right.

The Court: When they began to ration gas.

The Witness: That is right.

The Court: And some of the stations were open only a few hours at a time?

The Witness: Yes.

The Court: I happened to hold court there in 1942, gentlemen. In fact, just before the gasoline rationing went into effect. I even had a rationing card and took my first trip with it.

All right, we will take a short recess before you call your next witness. You excuse your witness, Mr. Somerville. I will leave that to you.

[fol. 1982] (Short recess)

The Court: All right, gentlemen, call you next witness.

Mr. Alexander: Mr. Strable.

William Strable, called as a witness by the plaintiff, being first sworn, was examined and testified as follows:

The Court: Are you through with the State of Oregon now? Are we moving into a new state?

Mr. Alexander: The State of Nevada.

The Court: Oh, we are going into Nevada now.

The Witness: Yes, we are going up into Nevada.

The Clerk: What is your name, please?

The Witness: William Strable.

Direct examination.

By Mr. Alexander:

Q. Where do you live, Mr. Strable?

A. I live nine miles south of Las Vegas on Highway No. 91.

Q. Are you the owner of a service station up there at that location?

A. Yes, sir.

Q. Do you have contractual relationship with the Richfield Oil Corporation at that location?

A. Do you mean as far as my gasoline rationing is concerned?

[fol. 1983] Mr. Paradise: I can't hear you, Mr. Strable.

The Witness: Do you mean my minimum and maximum?

By Mr. Alexander:

Q. No, Mr. Strable. I say, do you have a contractual relationship with Richfield Oil Corporation?

A. Oh, yes. Yes, I handle their products.

The Clerk: Government's Exhibits 14, 14-A, -B, -C, and -D marked for identification.

(The documents referred to mere marked Plaintiff's Exhibits 14, 14-A, -B, -C and -D for identification.)

By Mr. Alexander:

Q. Mr. Strable, I show you these documents, 14, 14-A, -B, -C, and -D which are Government's Exhibits in this case, and ask you to examine these and tell me if your signature appears on them?

A. Yes, that is my signature. Yes, yes. That are all my signatures.

Mr. Alexander: The Government offers these exhibits into evidence, your Honor.

The Court: They may be received.

Mr. Paradise: No objection.

The Clerk: Government's Exhibits 14, 14-A to 14-D, inclusive, in evidence.

By Mr. Alexander:

Q. Mr. Strable, will you describe to the court the circumstances under which these documents were executed?

A. Well, I had a lot of verbal terms that were never carried out. It seems as though when I got my leases back, [fol. 1984] where they are making a new lease, it would not be writ up the same as my verbal documents—that is, my

verbal agreements. I had so many verbal agreements with the——

Mr. Paradise: Just a moment, please, Mr. Strable.

By Mr. Alexander:

Q. Mr. Strable, did you have a conversation with a representative of the Richfield Oil Corporation?

A. Oh, yes.

Q. In connection with these documents?

A. Oh, yes.

Q. Where did that take place, Mr. Strable?

A. At my place of business.

Q. Could you relate to the court the persons from the Richfield Oil Corporation?

A. Mr. Graves, he is their local distributor, and then there was either one or two company men, which I cannot recollect their names. Some of them came in and they don't even introduce themselves.

The Court: All right.

Mr. Alexander: May I have those documents, your Honor?

Q. I show you Exhibit 14-B and ask you if you will read paragraph 1 and describe*d* to the court what the discussions were at this time with Mr. Graves and those other unidentified representatives?

A. Do you want me to read? "Seller agrees to sell [fol. 1985] and deliver"——

Q. Oh, excuse me. I do not want you to read it. I want you to look at it and describe the conversation which you had. You will note you initialed that paragraph.

A. Yes. Well, I didn't quite understand how they made up the minimum gasoline there. I don't think it was very fully explained to me. From the last witness here it kind of come out there that what they are basing it on was your gallonage from before.

Mr. Paradise: I move that be stricken. The question calls for conversation. May I ask that the time of this conversation be fixed?

The Court: Yes, it may be stricken. Let us fix the time and then we will go from there.

Mr. Paradise: And place.

A. Well, it would be approximately the date of this one here. This is May 30th.

Mr. Alexander: It is June of 1948, your Honor.

The Witness: Wait a minute. Yes, June 1st, 1943, and ran through to May 30th. Well, they have got it "58".

Q. Mr. Strable, did you have conversations with Mr. Graves and those other unidentified individuals as to the petroleum products that should be carried at your service station?

A. It was understood that I should keep right on hand-[fol. 1986] ling Richfield products, which I have done for the last 13 years.

Q. Now, Mr. Strable, I show you Government's Exhibit 14-D and ask you to examine paragraph 1 and state, if you will, to the court with whom you had conversations concerning that document?

A. That was with Mr. Graves and an unknown man to me, a Richfield representative from the office down here. I can't make out his name on here.

Q. Where did that take place, Mr. Strable, and when?

A. At my place of business.

Q. And when?

A. That was November 1st, 1948.

Q. No, Mr. Strable. When did the conversation take place. I am not asking you to read the document.

A. It must have taken place just prior to November 1st, 1948.

Q. And looking at that paragraph can you recollect the nature of the conversation that you had with these gentlemen?

A. Well, here, up above here, it gives "this agreement executed this 15th day of October, 1948." Well, then, you see they have got it dated commencing November 15, 1948.

Q. Mr. Strable, calling your attention now to this conversation you had with these representatives from Richfield, [fol. 1987] when this document was brought before you, was paragraph 1 of that document pointed out to you?

A. I can't recall them doing it. I can't recall them pointing it out to me, no.

Q. Mr. Strable, this last document you had before you, 14-D of the Government's in evidence, did you have any conversation with the Richfield representatives as to why this document was being brought to you for your signature?

A. Well, it was something to do apparently with this minimum and maximum.

Q. No, Mr. Strable. As to why it was being brought to you.

A. Well, just for my signature, I guess.

The Court: Well, were you told why it was necessary?

The Witness: Well, that is when they put a minimum and a maximum on it.

The Court: What did they tell you about the minimum and maximum?

The Witness: They didn't explain it fully to me.

The Court: All right.

The Witness: I was going to bring that up myself but this other gentleman, this last witness here, why, it was about the same thing.

The Court: Do not say "the same thing." Don't be educating us.

[fol. 1988] The Witness: I know, but it was the same circumstances.

The Court: That does not go in accord with the law.

The Witness: Yes. Okay, Judge.

The Court: You were in another state. You were not there and you have to testify to transactions you had with Richfield.

The Witness: Yes.

The Court: What did you say, then, when that was brought up there?

The Witness: Well, I just accepted it. They told me that it would not have any bearing on me whatsoever. The only thing, it guaranteed me that amount of gasoline, a maximum and a minimum.

The Court: I see. All right.

The Witness: But they told me they wouldn't hold me to it.

The Court: All right.

By Mr. Alexander:

Q. Mr. Strable, what was the amount of rent that you were paying to the Richfield Oil Corporation under this lease arrangement that you had with them?

Mr. Paradise: I can't hear you.
Mr. Alexander: The amount of rental.
The Court: What?
Mr. Alexander: The amount of rental.
Mr. Paradise: Under one of those exhibits?
[fol. 1989] Mr. Alexander: That is correct.

A. Well, I believe that is a cent and a quarter with a guarantee of so much.

Q. Was the amount of rental that you were paying the Richfield the same amount that you were receiving from them?

A. Yes.

Mr. Alexander: We have no further questions, your Honor.
The Court: All right. Any questions?
Mr. Paradise: May I see the exhibits, Mr. Alexander?
The Court: Did you operate a station yourself?
The Witness: Yes, sir.

[fol. 1990] By Mr. Alexander:

Q. Mr. Strable, have you ever had any conversation with Richfield Oil representatives in connection with the painting of your location?

A. Yes, I have.

Q. Would you relate it to the court, please, sir?

A. Well, I had a heck of a time.

Mr. Paradise: May we have the time fixed, and the parties present, please?

By Mr. Alexander:

Q. With whom have you had the conversations, and approximately when?

A. With the Richfield representative from here, from Los Angeles, the Western Maintenance man, and with Bill

Graves, in Las Vegas, the local distributor. They have been working on it for seven months, and it isn't finished yet. I have been for two years at this paint job, and they have been seven months at it, and it isn't done yet.

Q. Those conversations have been held within the past two years, then?

A. Yes, they are painting it. They got to it last fall, where it should have been painted in the spring, so it would look nice for the summer months. They didn't get to it until seven months ago and aren't through with it yet.

The Court: Before I get through, it looks like I will have to act as an arbitrator on a paint job.

Mr. Alexander: That is all.

[fol. 1991] Cross-examination.

By Mr. Paradise:

Q. This is just to clarify the record,——

A. Yes.

Q. —Mr. Strable. Did you say the rent that you are receiving on your lease, where you are the lessor,—by the way, I will withdraw that.

You are the owner of this property, are you not?

A. Yes, that's right.

Q. And you lease the property to Richfield?

A. I lease it to Richfield, yes.

Q. Under a lease dated June 24, 1948, which is Government's Exhibit 14?

A. I pay them a check, and then they send me back a check.

Q. And what did you say the rent is?

A. It is a cent, and then an extra quarter of a cent, and that I also had to send them, and they refund that back to me also.

Q. That is the point that confused me.

A. No, I am wrong there.

Q. These instruments call for——

The Court: Just a minute. He wants to correct something.

The Witness: I think I am wrong there. I think I just [fol. 1992] send them the cent check, and then they send

me back,—they send me two checks, one for a cent a gallon, and one for a quarter of a cent. I guess that's the way they work it. I don't know. It is a really complicated system they have got.

By Mr. Paradise:

Q. These instruments correctly express the rental arrangement; is that correct, Mr. Strable?

A. Yes, sir. Try to figure it out.

Q. Mr. Strable, at the time when this second group of documents, the sales contract and the lease from Richfield to you, as lessee, which were dated August 15, 1948, and I am referring to Government's Exhibits 14-C and 14-D,——

A. Well, that's the last lease, you mean?

Q. Yes. At the time the last lease and sales contract, dated October 15, 1948, were made, what was your gasoline gallonage at that station?

A. Well, I presume right around the same amount here, around—well, I run between 5 and 6 thousand, as a rule.

Q. Yes.

A. As a rule, I think it averages up around 6. I don't keep any records of my gallonage. I have all my invoices at home, but I don't keep any records.

Q. To the best of your recollection?

A. I would run between 5500 and 6,000. In the summer I would run over that, but in the winter it would slack off, where I wouldn't pump quite so much, but it would average [fol. 1993] out over the year round.

Q. And that is the contract you signed?

A. That is their figure.

Q. I am not talking about the gallonage in the contract. I am talking about the figure you just mentioned.

A. Yes.

Q. That was your gallonage?

A. Yes.

Q. And that was the gallonage you were pumping at the time the contract was signed?

A. I presume they went back and took it off.

Q. I am not asking what they did for the purpose of arriving at the figures in the contract. All I am asking is, is that the gallonage you were pumping at that time?

A. I presume that is pretty close to it.

Mr. Paradise: Okay. That is all.

Redirect examination.

By Mr. Alexander:

Q. One further question: When this document of October 15, 1948, was presented to you, the minimum and maximum were already in there, were they not?

A. They were already on there, yes.

Q. Mr. Strable, had you had any conversation with the company officials prior to their bringing this document before you concerning these maximum and minimum figures? [fol. 1994] A. No; no.

Mr. Alexander: That will be all, Mr. Strable.

The Court: I was going to ask a question, but I don't think we are going to get anywhere with it.

The Witness: I am apt to ask you one back.

Mr. Dixon: Thank you very much, Mr. Strable.

(Witness excused.)

Mr. Somerville: The government calls Walter Edgar.

Walter G. Edgar, called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

The Clerk: What is your name, please?

The Witness: Walter G. Edgar.

The Clerk: That is E-d-g-a-r?

The Witness: That is correct.

The Court: Where are you going now?

Mr. Somerville: Back to Oregon.

The Court: Oh, you are going back to Oregon?

Mr. Somerville: Yes.

The Court: I understand the weather up there is very nice this spring, although it wasn't when I was there.

By Mr. Somerville:

[fol. 1995] Q. Where in Oregon do you live, Mr. Edgar?

A. In Portland.

Q. Have you ever been employed at a service station in Portland?

A. Yes. I worked for Standard Stations there for nine years. I had a total of 10 years in with Standard Stations before I quit.

Q. You were an employee, were you?

A. Pardon?

Q. You were an employee, were you?

A. I was employed right up to the time I took my first Richfield station.

Q. When did you take a Richfield station? Or, you left Standard voluntarily?

A. Yes, I left. I made a lease on a Richfield station, or knew I could get one, and I turned in my resignation at the same time with Standard Stations, Inc., and that was in 1942, the early part, about February of 1942.

Mr. Somerville: May it be stipulated, counsel, that this was an L-O station?

Mr. Paradise: Yes, so stipulated.

By Mr. Somerville:

Q. You entered into a Form 542 lease at that time, did you?

A. That's right.

Q. Where was your station located?

[fol. 1996] A. It was at 45th and Hawthorne, the first station.

Q. At the time you took over the station, who turned over the premises to you?

A. I believe a Mr. William Parish checked the station out to me. He was the Richfield Oil Company representative.

Q. Is he the man that also negotiated this lease?

A. Yes, he is the man that contacted me and sold me on the idea of taking a Richfield station.

Q. Was there any conversation with him concerning the products that you should handle at that time?

A. Well, it was explained to me that it was a 100 per cent Richfield station, and I was supposed to sell their products exactly.

Q. Did you agree to that arrangement?

A. That's right.

Q. Did you subsequently obtain another lease of another station selling any petroleum products?

A. Yes, I had obtained it on the 23rd and Burnside station.

Q. Approximately when?

A. Approximately, oh, four to six months after I took on the 45th and Hawthorne station. I operated both stations for a while.

Mr. Somerville: May it be stipulated, counsel, that there is a Form 542 lease between Richfield, as lessor, and [fol. 1997] Walter Edgar, as lessee, covering those premises, dated March 17, 1942, and specifying a rental of $30 per month, a flat rent?

Mr. Paradise: That is correct, and it appears to be on a Form 542, with a print date of March, 1941, a copy of which is attached to the stipulation of facts.

Mr. Dixon: And which is also Government's Exhibit 1-B?

Mr. Paradise: I haven't checked that. I will.

Yes, that is also Government's Exhibit 1-B.

Mr. Somerville: May it also be stipulated that on August 22, 1942, there is a rider attached on Form 542-F, print date 4-42, specifying a flat rental of $75 per month?

Mr. Paradise: That is correct.

Mr. Somerville: And a subsequent rider executed March 21, 194[illegible] specifying $75 per month and one cent per gallon in excess of 7500 gallons?

Mr. Paradise: So stipulated.

By Mr. Somerville:

Q. Mr. Edgar, at the time you took over possession of the premises at 2304 West Burnside Street, were you instructed any further as to the products you should sell?

A. Well, I believe that it was my understanding from my previous location that it was supposed to be carried

on in the same manner as the other station, that there was supposed to be no other products except those approved by [fol. 1998] Richfield Oil.

Q. And you continued to operate both stations?

A. I did for a while, until Richfield found an operator that they thought was better, and they took the other station away from me.

Q. They did not permit you to have both stations?

A. I couldn't be both places at the same time.

Q. With respect to the station at 23rd and Burnside, did you have an investment in that station?

A. Yes, I did.

Q. And what did that consist of?

A. Well, that consisted of some of the fixtures of the station, including all the—and the merchandise and all the lubrication equipment. It was practically everything except the hoist and the pumps and the building.

Q. What would you estimate your investment was?

A. Pardon?

Q. What was the total amount of your investment?

A. It was—I don't have the exact figure, but it was over $1,000.

Mr. Paradise: How much?

The Witness: Over $1,000, I believe is right.

By Mr. Somerville:

Q. Now, with respect to your actual practice, did you abide by your agreement to sell only Richfield products?

A. Yes, I did.

[fol. 1999] Q. Did that include what is referred to as TBA products?

A. Well, I followed the regulations very closely for some time, and then due to a scarcity of items due to the war condition, I was not able to obtain enough Goodyear tires, which were an approved item, and I found a source of supply on the Zenith tires, and I carried Goodyear and Zenith as well.

I had talked to one of the merchandisers, and told him that I needed another source of supply, and I couldn't get the tires, and I had an approval at one time from one of the merchandisers that it was all right to do that.

I think there were possibly a few other items that I had that were not approved items, but they were very few.

Q. Did you at any time ever handle any competitive oil?

A. I did at one time, through the approval of Mr. Hutchinson, who was the manager of the plant, and I believe he was called the branch manager. He had charge of all the service stations, and that was before Mr. Bradford's time. Mr. Bradford took his place after he was promoted.

Q. Who is Mr. Bradford?

A. Mr. Bradford was a plant man at that time, and was a Richfield Oil Company employee.

Q. Now, with respect to the circumstances surrounding [fol. 2000] this permission granted to you by Mr. Hutchinson to handle this competitive oil, will you explain were there any conversations regarding it?

A. Yes, there were.

Q. Did you request permission to handle this oil?

A. Yes, I did.

Q. When did you make such a request, approximately?

A. Well, after I had been in the station a few months, I contacted——

Q. Where did you make that request?

A. Right on the premises of the station.

Q. And what was your reason for requesting permission to handle it?

A. I had one customer that had followed me for a period of years. He worked for Stubbs Electric Company. His name was Mr. George V. Ginty, and he had given me business, as far as his car was concerned, continuously over a period of years, but while I was with Standard Oil Company he did not buy any Standard oil, and he had to go elsewhere to get his oil changed. But when I was in business for myself he felt that I should be able to change his oil, as long as I wasn't working directly for the Richfield Oil Company, and I was what I termed a little businessman.

Q. Now, what did you say to Mr. Hutchinson, and what did he say to you in regard to that?

[fol. 2001] A. Well, I explained the situation to Mr. Hutchinson, that this man had sent numerous customers to my

station, and I had contacted him for his business, and he told me he would get me several of the men at Stubbs Electric Company, and a lot of his friends, to come up there, and he was a busy man, he was the sales manager for Stubbs Electric Company for several years, and he wanted to have it all taken care of in one operation. And I told him that I would see what I could do. And after talking to Mr. Hutchinson, I agreed, and he agreed to continue, and I would buy one case of this at a time, of Quaker State oil, I believe it was No. 20 grade, and I kept this case underneath, out of sight, under the lube bench, and this case of oil would last sometimes for six months. This man drove up and down the state pretty much, but even with that mileage, it could last longer than that, and it would be according to the mileage.

Q. Did you have any other customers that asked for Quaker State?

A. I did have, but I didn't bother with them, but just took care of this one customer on outside oil. All the other customers bought Richfield oil, I sold it to them, and while I am at it, I will tell the court that I took the station when it was doing about 5,000 gallons and I run it up to 18,000 gallons, and I did that with each station I ever had, whether [fol. 2002] for Standard Oil Company, or for Richfield.

Q. That is fine, Mr. Edgar, but please be responsive to the questions, now. With respect to these tires, these Zenith tires, first of all, was there any advantage to you in handling Zenith tires?

A. Well, it was an advantage in that I got a little better price, made a little more money out of the Zenith tire. I believe that the margin was not very much, but it was a much better tire for me to sell, in that I could guarantee it to my customers with a road warranty guarantee, such as I had sold at the Standard Oil Company with the Atlas tire, and the Goodyear tire carries a warranty guarantee, but it does not carry a road hazard guarantee. So if a man should drive out of the station and wreck the tire right after I mounted it, he had no recourse with the Goodyear, where, if he was unlucky and ruptured a tire with a road hazard break, I could adjust it immediately with the Zenith.

Q. Subsequently, was there a period when Goodyear tires were available in plentiful supply?

A. It is possible there was. I believe that's right.

Q. Did you ever experience any difficulty concerning handling of Zenith tires?

A. You mean with Richfield?

Q. Yes.

A. Well, I believe I was contacted one time.

[fol. 2003] Q. By whom, and when?

A. Sometime towards the last of my time in operating the station. I would say sometime in 1943.

Q. In 1943. Who contacted you?

A. One of the merchandisers. I don't remember all their names. There was one man named Herb Green that was a merchandiser, that contacted me, and he used to work with Standard Stations, and he said, "Well, Walt, you better keep up your Goodyear sales. The company is watching you." So I probably bought a couple of Goodyear tires at the time to take the heat off.

Q. Calling your attention to battery cables, did you handle battery cables?

A. Yes, I handled battery cables.

Q. Were they approved battery cables?

A. I believe the battery cables were all approved cables that I handled. It is possible that some of them might not have been.

There was one particular cable connection with I have brought a sample of in the court room here that the Richfield Oil Company asked me to buy through their sales organization, and they were very much of a source of trouble to every man that ever mounted any of them. I don't know if there are any members in court that ever saw any of the deals or not, but if a fellow's cable was corroded or worn some, or, according to the sales program they put out, [fol. 2004] these are supposed to be—they are——

Q. Just this, Mr. Edgar: Do you mean you did place an order for these battery cables?

A. Yes, I bought several of them.

Q. And you wanted them, did you?

A. Well, I was asked to buy more than I wanted. They contacted us several times, and they were trying to push the sale over, and I only wanted to buy a few of them, and

I was forced to buy—I say "forced to buy"—I was asked to buy more than I wanted to buy.

Q. And you did buy?

A. And I did buy more than I wanted to buy.

Q. And now are you still operating your Richfield service station?

A. No, I am not.

Q. Did you leave the station voluntarily?

A. No, I didn't.

Q. What were the circumstances surrounding your leaving the station?

A. Well, one day Mr. Bradford came in to the station——

Mr. DeMartini: Is that the same Mr. Bradford who was here on the stand today?

The Witness: That is the same man, and he started picking the station to pieces.

[fol. 2005] Mr. Paradise: Started what?

The Witness: Picking the station to pieces. In other words, finding fault with the operation of the station, and it didn't take him very long to get around to this case of Quaker State oil that was not hid. I didn't feel it was necessary to hide it, but it was still out of sight. A person would have to get down kind of low and look underneath the bench to see it.

And he said, "What is that, Edgar?"

I said, "That is some Quaker State oil I have permission from Mr. Hutchinson to keep here for one customer."

He said, "You get it out of here."

I said, "Mr. Hutchinson and I have gone over this, and I am sure it is all right with him."

He said, "I don't care what Hutchinson told you. I am running this deal now, and you get that oil out of here, and quick."

[fol. 2006] I said, "Mr. Bradford, I don't like to do that. This man has given me a lot of business."

He said, "Edgar, I will give you 24 hours to clean this station up, and if it isn't cleaned up perfectly in 24 hours, you are going out."

I said, "Mr. Bradford, I am sorry."

And he, red-faced, turned around and walked out of the station. And I worked the next day and night cleaning up

that place, inside and out. It was during wartime, and there wasn't help available. I had girls helping me at the pump lot, and I worked many hours every day, but I had the station in a position to where it would pass Standard Oil Company, and that's pretty tough.

Q. Then was it this same period that you were cautioned concerning handling the Zenith tires?

A. Oh, I surmise that was about a month before.

Q. Were you told by anyone to get rid of those tires?

A. I don't believe they told me to get rid of them, but they told me that I must sell——

Q. We are talking now about Mr. Williamson, are we? Did you say it was Mr. Williamson? I have forgotten your testimony.

A. Well, Mr. Williamson was in the station one time and told me—his name is Charles Williamson, and he was a merchandiser, and he was in the station at one time and told [fol. 2007] me the company wanted me to get them out, but at the time of the removal—of my removal from the station, I don't think they made too strong an issue of that item.

Q. Were you told why you were being terminated?

Mr. Paradise: By whom, and when?

The Witness: Yes, they——

By Mr. Somerville:

Q. Who notified you that you were being terminated?

A. Well, Mr. Bradford called me a couple of days later. He didn't come back to inspect the station after I cleaned it. He called me a couple or three days later, and he said, "Edgar, I have a little station out on Gillingsworth I want you to take."

I thought they wanted me to take an additional station, so I said, "Mr. Bradford, I have all I can do here."

He said, "You aren't going to be there any more. We are going to have to make a change."

Q. Did he tell you why?

A. And I said, "I have got it all cleaned up."

He said, "Yes, but there are too many things. You have handled different merchandise in there, and your station

isn't clean, and you wouldn't take the oil out of the station the other day, and I can't just put up with it. I have orders from up the line, and I just have to take you out of the station."

[fol. 2008] Q. Were you then served with a notice of termination?

A. Yes. I didn't get a notice of termination then, but I told him that I had put everything I had into that station to build it up, and that I didn't have any other place in mind, and I would certainly appreciate a chance to talk it over.

He said, "Well, I don't think so. I can't do anything about it."

He said, "I think this is it."

I said, "Mr. Bradford, I will do anything possible to keep this place. I have put a lot of work in it, and I have lots of good customers, and I will do anything I can."

I said, "Would it do any good to talk to Mr. Hutchinson?"

He said, "I don't think so. I am in charge now."

I said, "Well, I won't give it up."

He said, "You read your lease. You read down at the last part of it, where it says if at any time either party desires to break the contract, either party has a right to do so."

So I talked to my attorney about it, but he said, "Edgar, you're stuck." And, believe me, I was.

[fol. 2009] Q. Did you appeal your case to any of Bradford's superiors?

A. Yes, I did. I took it to Mr. Hutchinson a time or two and I called Seattle and tried to talk to the main bosses there, and I talked to the assistant division manager there. I don't know his name. But I did everything that I could to try to keep the station. I went out to see Mr. Bradford on two or three occasions at night after I was through with the operation of the station and practically got down on my knees to him.

Q. And then did you go out of the station?

A. Pardon?

Q. And then you left the station?

A. They came in to check me out a couple of days later and I had not received a written notice, and my attorney

said, "You can stay until that time." So I demanded the written notice, and two or three days later it was there.

Q. Who came around with those papers at that time?

A. I am sorry. I can't tell you the man's name that checked me out.

Q. Okay. Then at the time you left the station did you have any competitive products in your stock? You did have the tires.

A. I had the tires and I had some batteries, too. The batteries were another short item I secured from Lincoln [fol. 2010] Batteries through the same outlet that I got the Zenith tires. And I moved—when I went into the station I was forced to buy everything that man had there, and when I went out the man that took my place was not a man of experience in the service station business, as Mr. Bradford said they generally got a man to replace the fellow they were taking out that was experienced. This man was not, but anyway, they let him buy the things that he choosed, as long as they were Richfield items. Do you follow me?

Q. Yes.

The Court: What became of your other non-sponsored items, competitive?

A. I took it home and put it in my garage out at my home until I was able to lease a service station across the street from them, and it cost them several thousand gallons a month.

Mr. Somerville: That will be all with this witness.

The Court: What station did you get?

The Witness: I got the Union oil station right across the street.

The Court: The Union.

Cross-examination.

By Mr. Paradise:

Q. I take it, Mr. Edgar, you were on rather unfriendly terms with Mr. Bradford throughout this period?

[fol. 2011] A. Well, I had not been on unfriendly terms with him, with the one exception, I believe, I had called the plant for gasoline and they promised me delivery and then

it was late in coming and I called back and asked him, and he got a little bit hot under the collar at me. But I am a more or less friendly person and don't get unfriendly with anyone unless they give me a bad time.

Q. Well, actually, the fact of the matter is that you and Mr. Bradford had a fist fight together, did you not, at Mr. Bradford's home?

A. That is the case. That was several months later, however.

Q. Now, Mr. Edgar, immediately prior to moving into the first Richfield station you were an employee of the Standard Stations, Inc.?

A. That is right.

Q. That was in a station owned by Standard Oil or leased by Standard?

A. No, it was a company owned station.

Q. It was owned by Standard?

A. Yes.

Q. I see. And then you came over to Richfield and solicited one of its stations?

A. Richfield came into my Standard Oil station and solicited me to go to the Richfield station.

[fol. 2012] Q. Oh, I see. I misunderstood you earlier. Richfield asked you to come in, is that correct?

A. That is right.

Q. At the time Richfield asked you to take over this station did you know that this particular station was either owned or leased by Richfield?

A. Yes, I did.

Q. With whom did you talk?

A. I talked with both Mr. Hutchinson and Bill Parish on the first.

Q. That is concerning the first station?

A. That is right.

Q. That was at the station that was on Hawthorne Boulevard?

A. That is right.

Q. That was a 542 L-O lease which you signed on March 17th, 1942?

A. That is right.

Q. I believe you mentioned what the gallonage was at that station at the time that you moved in?

A. At that particular station, no. I didn't mention that gallonage.

Q. Forgive me for asking. I thought you had. Well, what was the gallonage on that station?

A. As I recall it, it was six to seven thousand.

[fol. 2013] Q. And did you similarly increase that one?

A. I was not there long enough to raise it. I just wasn't there long enough to do much about it. I don't believe that it was changed much.

Q. Which was the station that you mentioned that was doing 5,000 gallons per month at the time you moved in?

A. That is 23rd and Burnside station.

Q. That was the second station?

A. Yes.

Q. Which station was it? Oh, I see. The one on 23rd and Burnside, that was the lease made on March 17 of 1942. The one that you ran for only a short time was the station located on Hawthorne Boulevard and that was the one that was made on February 25, the lease was made on February 25 and terminated by a termination agreement on July 22, was that correct?

A. I believe that is right.

Q. Is it not correct that the rental called for by your lease on the station on Hawthorne was a flat $10 per month?

A. When I first went in it was.

Q. Was it ever changed?

A. Yes, I believe it was.

Q. When was it changed?

A. I am sorry, I can't give you that information.

[fol. 2014] Q. How long were you in that station?

A. About, I believe it was six months all together. I could be wrong on that figure. You have it there, don't you?

Q. Isn't it a fact that $10 a month was all you ever paid for that station?

A. It could be right.

Q. And during that time while you were in there did you not have a gallonage never less than 8,800 gallons per

month, and didn't it also go up to almost 12,000 gallons per month?

A. I couldn't tell you for sure on that.

Q. You have no recollection?

A. I don't remember, sir.

Q. Was the station that we are now talking about, where you paid the $10 rental, is that the one where you said you had a thousand dollar investment?

A. No, that was the 23rd and Burnside Station, my investment at that place. I believe I have a copy of it here if you would like to know it.

Q. No. I was just interested in tying down which station it was where you had the $1,000 investment.

The Court: Which station were you checked out of, now?

The Witness: It was over—this is just a conditional sales contract that I took over for equipment on that station, [fol. 2015] and it was $540 for equipment and the merchandise was in excess of that.

The Court: When you were checked out what did you get? How much stock were you paid for? You said you took some of it to your house. Do you remember how much you were paid by the incoming operator?

The Witness: No, I can't say for sure.

The Court: For the stock on hand, for the Richfield items?

The Witness: No.

The Court: All right, let us go on from there. I thought maybe you had it there.

By Mr. Paradise:

Q. The Hawthorne station was the first one you moved into?

A. That is right.

Q. At the time you signed this form of sublease you had a discussion with Messrs. Parish and Hutchinson about it, you say?

A. Yes.

Q. They explained to you, did they not, that you were to be required to adhere to Richfield's policy and operate the station in the manner in which Richfield directed?

A. That is right.

Q. And this lease contains a clause permitting Richfield to terminate it or you to terminate it on 24 hours notice?
[fol. 2016] A. I was not aware of that clause at the time that I signed it, but——

The Court: You found out later?

The Witness: Yes, and it was agreeable with me due to the fact that I had a help problem out there and I couldn't run the place as I would like to have it run.

By Mr. Paradise:

Q. With respect to this station on Burnside, the rental provisions of which Mr. Somerville read into the record while he examined you, is that the station where you said you had a thousand dollar investment?

A. Yes.

Q. What did that thousand dollar investment consist of?

A. Well, it consisted of the gas in the tanks and the lube oil in the tanks and the merchandise on the counters and the toilet paper dispenser, the wastepaper basket in the rest room and the towel dispenser—practically everything with the exception of the major equipment, including all the grease guns. And I am not positive about the lube oil tanks, whether it included those or not. I can't remember that item.

Q. All of the things you owned consisted solely of movable tools and equipment, did it not?

A. I guess those dispensers could be unscrewed from the wall.

Q. When you said you owned the fixtures you did not mean to indicate that you owned any of the tanks or the pumps?
[fol. 2017] A. No.

Q. Nor the building?

A. Nor the building.

Q. Nor any of the chief items of equipment in that station?

A. No. I said that I didn't own those.

Q. This is the station which you mentioned that you built up from 5,000 gallons when you moved in to 18,000 gallons a month?

A. Yes, that was an estimated figure. It was somewhere within that radius.

Q. Mr. Edgar, I will show you a tabulation of figures, the top half of which down to a line which I will draw clear across the page relates to the station on Hawthorne Boulevard in Portland, Oregon, and the bottom portion of which relates to the station that you have just described on West Burnside. On the column on the left-hand side it gives each month, and on the column on the right-hand side immediately opposite the name of the month it gives a column of figures representing gallonage. I will ask you if these are not the accurate figures of the gallonage at that station during the time you occupied it?

A. That is the start of 1942 (indicating on paper) April, May, June, July?

Q. Are you asking me a question?

A. Yes, I am asking you. This is the 23rd and Burn-

[fol. 2018] side station?

Q. If you are calling attention to the Burnside station, the first item in the column is April 1942 and the corresponding figure for that month is 15,900.

A. That was supposed to be the first month that I took over?

Q. Well, I am asking you is that correct? Do those figures represent the figures?

A. I do not believe it is correct, sir.

Q. What about the other figures on the sheet?

A. The last year I had it, I know the station averaged 18,000 gallons, so these figures on there are not correct.

Q. None of those figures are correct?

A. I don't believe so.

Q. Did you purchase gasoline from anyone other than Richfield?

A. No, I did not.

Q. Do you have any clearer recollection after looking at these figures as to what the gallonage was at that station when you first moved in, the Burnside station?

A. I know the gallonage was low and I know that it was very low. The gallonage, in my recollection, was just approximately eight to ten thousand gallons after I went in there.

Q. You testified before it was 5,000. Was it close to [fol. 2019] that?

A. Well, I might be wrong on that exact amount, but it was not over eight.

Mr. Paradise: I will ask that this be marked as Defendant's Exhibit next in order for identification.

The Court: It may be.

The Clerk: Defendant's Exhibit I marked for identification.

(The document referred to was marked Defendants' Exhibit I for identification.)

Mr. Paradise: That is all.

The Court: All right, any redirect?

Mr. Somerville: Just a question or two.

Redirect examination.

By Mr. Somerville:

Q. Mr. Edgar, the court was interested in the amount of your investment at the time that you were checked out. Can you tell us approximately how much you had invested in your stock and equipment at that time?

A. Well, the tanks were practically empty. I know when I moved in there that the oil tanks were practically empty. I say "practically empty," they were low because the men were contemplating a change and they didn't have any more investment in there than was necessary, because they wanted to hold it down at the time the move for exchange in operators was made, and the gasoline supply was low and the oil supply was low. When I went out it was high, [fol. 2020] so it would have made considerable difference. There was probably, my stock in the station was probably $1,500 when I moved.

Q. What did you realize from your sale of equipment and products to the new operator?

A. As I remember, it was around $1,200, but I don't have that figure here. I am sorry.

Q. Going back to the time that you took over the lease, the first lease, did you say that it was Mr. Parish who so-

licited you to take a lease at the time you were a Standard Station employee?

A. Yes. He offered me a cent a gallon more than the company actually gave me. He said it was a misunderstanding on his part and I went—I got my first gas delivery the day I went out to the station, and I called the driver on it right away. He said, "Well, Edgar, all I do is make deliveries. You will have to talk to the boss." So I went down to see the boss. And I held that over them, and that is why they didn't raise the $10 out there. I recall my memory of that.

Q. Confining your answer to this particular station, did you have a share in the profits of the operation of the Standard station?

A. No, I didn't.

Q. Merely a salary?

A. Well, I will put it this way: I was a salaried man [fol. 2021] with a commission. All Standard stations are operated on salary and commission in order to promote sales. The salary is your basic pay.

The Court: I do not think we are interested in that.

Mr. Somerville: That is all.

The Court: The only reason I asked that is to see whether he suffered any loss, and he was not able to tell us how much he got when he left, so he can't tell. All right, step down, Mr. Edgar. Call your next witness.

Mr. Somerville: The Government calls Mr. Scollard.

Jacob C. Scollard, called as a witness by the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: Jacob C. Scollard.

Mr. Paradise: Your Honor, I do not want to interrupt the course of the trial but there was a matter of redirect examination of Mr. Edgar. May I ask him a few questions before he leaves the courtroom?

The Court: All right, you step down for the moment. Sit in one of the chairs in the jury box. Come back, Mr. Edgar, before you might be on your way to Portland. All right.

Mr. Paradise: Your Honor had just indicated in response to counsel's last question that your Honor was not interested in this subject, but I take it from counsel's ques-
[fol. 2022] tion that this is a part of the theory of their case, and that is the reason——

The Court: No, no, I was not interested in a comparison between what he was doing at Standard.

Mr. Paradise: That is what I was getting at.

The Court: I was interested in finding a comparison between what he called his investment when he went in and what he got when he left.

Mr. Paradise: I was directing my attention to the other item.

WALTER G. EDGAR (Recalled).

Redirect examination.

By Mr. Paradise:

Q. What was the nature of the commission over and above the salary that you received while you were at the Standard station?

Mr. Somerville: I will object to that.

The Court: I will sustain the objection. I am not drawing an inference as to the tactics of the generosity of the stations. That is not before me. All right, step down. Let us go ahead with Mr. Scollard.

[fol. 2023] JACOB C. SCOLLARD (Recalled).

Direct examination.

By Mr. Somerville:

Q. What is your name, sir?

A. Jacob C. Scollard.

Q. Where do you reside?

A. Portland, Oregon.

Q. Have you at any time held any position in the employment of the Richfield Oil Corporation?

A. Yes.

Q. What was your position?

A. Salesman.

Q. Where were you a salesman?

A. Portland, Oregon.

Q. And as salesman did you contact the dealer accounts?

A. Dealer type stations, yes, sir.

Q. When you refer to dealer type stations do you mean stations under paint and sales contracts or 3-C stations?

A. Yes, sir.

Q. You are familiar with those types of agreements, How many such stations were under your jurisdiction?

A. Well, I had about 15.

Q. Who was your immediate superior?

A. Mr. Bradford.

Q. What was the period you were employed as a salesman?

[fol. 2024] A. July 1st '45 until July 1st '46.

Q. Were there also merchandisers employed in Portland?

A. Yes.

Q. And what category of stations did the merchandisers supervise?

A. Well, they were L-O units.

Q. Did you have any meetings with Mr. Bradford or other merchandisers or salesmen?

A. Yes, every morning.

Q. Every morning. And where did those meetings occur?

A. On 12th and Sandy Boulevard.

Q. At those meetings were specific problems concerning competitive products or competitive signs in stations handling Richfield's gasoline discussed?

A. Yes.

Q. Was the Richfield TBA program discussed?

A. Yes.

Q. What was your report concerning particular competitive problems with respect to the stations that you supervised or that you contacted?

A. Well, yes, I would.

Q. Would you report incidents in which competitive signs might be displayed on the dealer type stations?

A. Well, there was Wall Street Auto Service on North Lombard which is under Kawalski Brothers.

[fol. 2025] Q. Do you remember when you reported that at one of these meetings?

A. That was about March of '46.

Q. Did you receive any instructions from Mr. Bradford?

A. Yes.

Q. At any time? What were they?

A. It so happened that this competitive sign was on one of our A-frame boards and I removed it.

Q. Calling your attention to the service station operated by Mr. Carver at Southeast 82nd?

A. The same thing applied to that station.

Q. When did that occur?

A. That was about June of '46.

Q. Did you receive instructions from Mr. Bradford?

A. No. Those instructions came from Mr. Cresswell who was then branch manager.

Q. He succeeded Mr. Bradford?

A. Yes.

Q. With respect to the TBA program of Richfield, at these meetings were there any discussions as to whether Richfield service stations would be permitted to handle any but the approved TBA merchandise?

A. Oh, yes.

Q. And when did those discussions occur?

A. Well, they occurred usually on a Thursday morning [fol. 2026] when they had the TBA meetings.

Q. They were repeated occurrences during the whole period of your employment?

A. Yes.

Q. Did Mr. Bradford at any of these meetings explain what the policy was in that regard?

A. Well, yes, he would.

Q. And what did he say the policy was?

A. Well, that they were to handle just nothing but approved merchandise.

Q. Who were some of the other people present at these meetings? I realize there may have been some changes.

A. Well, Mr. Radke, Ed Radke, and Mr. Bert Gates.

Q. Who was Mr. Radke?

A. He was a distributor, a TBA distributor, and Mr. Gates was also a distributor. And there was Mr. Lalande,

Mr. Miller, and there was several others but I don't recall all their names.

Q. Who were Mr. Lalande and Mr. Miller?

A. They were TBA—well, I don't know what they call them.

Q. Would they be merchandisers?

A. Merchandisers, TBA merchandisers.

Q. Would Mr. Foster ever attend these meetings?

A. Yes.

[fol. 2027] Q. And would he have anything to say about the policy?

A. Yes.

Q. How often did he attend the meetings?

A. Well, approximately, I think about three times while I was with the company.

Q. Do you recall any particular time?

A. Well, no, I really don't. I couldn't.

Q. Was there some acceleration in the TBA?

A. Well, the first time he was there was about two months after I went to work, which would have been about September.

Q. What did Mr. Foster say about the TBA program with respect to whether TBA should be sold to stations handling Richfield gasoline?

A. Well, he was quite strict to see that that was all they handled, just approved merchandise.

Q. Did you make reports of the sales of gasoline and petroleum products at your stations under your jurisdiction?

A. Yes, I did on lubricating oils and greases, but not on gasoline.

Q. Were there TBA sales at particular stations discussed during the course of these meetings while you were there?

A. Yes.

Q. Calling your attention to a service station operated [fol. 2028] by an F. Milton Boyer at Lombard and Albino, are you familiar with this station?

A. Yes.

Q. Do you recall any instance that came up for discussion in any of these meetings concerning that operator?

A. Yes, several times.

Q. And about when did that occur?

A. Well, that was the first part of '46. It would be around January or February.

Q. And at that time were the other merchandisers and Mr. Bradford present?

A. Yes.

Q. And what was said and by whom?

A. Well, it was reported by Mr. Miller, one of the merchandisers, that he was carrying tires purchased from—Zenith tires, I think they were—from Marshall Wells, and they were not approved by Richfield.

Q. Was there any action taken at the meeting?

A. Well, yes. Mr. Miller was told to——

Q. By whom?

A. By Mr. Bradford to have him take the tires out. It so happened I went with Mr. Miller down to this station and told him.

Mr. Paradise: What station?

Mr. Somerville: Lombard and Albino.

[fol. 2029] The Witness: Mr. Boyer.

Mr. Somerville: Mr. Boyer.

A. Mr. Miller went in there and Mr. Boyer was quite angry. In fact, he chased him off the lot with a wrench. That was as far as I went with the case; I left.

The Court: No wonder he went into the real estate business. Probably the insurance rate would go up, at that rate, not to speak of his blood pressure.

By Mr. Somerville:

Q. Didn't the matter come up again for discussion?

A. Well, yes, it did. Mr. Bradford left a short time after that and Mr. Cresswell took over.

Q. Do you know whether or not——

A. Yes, they checked this man out of the station about 30 days later.

Q. What reason was assigned?

A. Well, I think it was due to the fact that he was carrying these off-brand tires.

Q. Calling your attention now to a service station oper-

ated by Fred Erz, 630 Northeast Union, that was a leased out station, wasn't it?

A. Yes, sir.

[fol. 2030] Q. You are familiar with Mr. Erz?

A. Yes, I was.

Q. Was there ever any situation involving competitive products that was discussed in this meeting concerning this station?

A. Something about fan belts, that he was carrying fan belts.

Q. When did that discussion occur? Can you fix any time?

A. I think that was about in March, of '46.

Q. What were the discussions?

A. Well, that he was carrying these fan belts, and wasn't——

Q. Who had reported he was carrying them?

A. Mr. Ogden.

Q. And then what happened?

A. Well, they tried to get him to take them out.

The Court: What character of station was this one,—an L-O station?

The Witness: An L-O station.

The Court: And the other one?

The Witness: An L-O station.

The Court: Boyer was also an L-O station?

The Witness: Yes, sir.

By Mr. Somerville:

Q. Did Mr. Radke, the TBA distributor, and Mr. Gates, [fol. 2031] the TBA distributor, inform you of any specific cases where TBA sales were known of competitive products.

A. No, sir.

Q. Would they normally report these situations in these meetings?

A. Well, yes. They wouldn't to me, though; to Mr. Bradford.

Q. Were they the subject of discussion?

A. Yes.

Q. Was Mr. Gates a TBA distributor throughout the period that you were there?

A. Yes.
Q. And also Mr. Radke?
A. Yes.

Mr. Somerville: That will be all, Mr. Scollard.
The Court: Cross examine.
Mr. Somerville: Oh, one more second.

By Mr. Somerville:

Q. Just one more thing, Mr. Scollard. I forget now whether you brought this out, but with respect to the Kawalski and the Carver station, were those dealer type stations?
A. Dealer type stations.
Q. That is, they had a paint contract and a sales contract?
[fol. 2032] A. Yes.

Mr. Somerville: Thank you.
The Court: I followed that as to the first two stations. All right.

Cross-examination.

By Mr. Paradise:

Q. These meetings that you testified to, Mr. Scollard, those were attended by merchandisers and salesmen?
A. Yes.
Q. It is correct, is it not, that the merchandisers have nothing to do with the dealer stations and only work with the L-O stations?
A. That is right.
Q. And it is also correct that the salesmen have nothing to do at all with the Richfield L-O stations?
A. That's right.
Q. And they only contact the so-called dealer stations?
A. Yes, sir.
Q. Am I right?
A. That's right.
Q. When you said you had 15 stations under your jurisdiction, what did you mean by that?

A. Dealer stations to call on for the sale of lubricating oils and greases.

[fol. 2033] Q. These were the people who were your customers?

A. Yes, sir.

Q. Did you sell them anything other than lubricating oil and grease?

A. And gasoline.

Q. You sold them gasoline, also?

A. Yes.

Q. Now, which were the two stations where you said you removed signs?

A. The Wall Street Auto Service on North Lombard.

Q. And who was the dealer who owned or leased that station?

A. Kawalski Brothers.

Q. Kawalski?

A. Yes.

Q. And what was the name of the other one?

A. Carver.

Q. The Carver station?

A. Emerson Carver.

Q. What was the first name?

A. Emerson Carver.

Q. Emerson. Now, what were the circumstances of your removing the sign from the Kawalski station? Had you talked to Mr. Kawalski before that?

A. Yes, I had. It was a Richfield A-frame board that [fol. 2034] I had just previously put on some Richfield advertising.

Q. I see. It was a Richfield sign board?

A. That's right.

Q. Why did you remove it?

A. Well, because he put a Quaker State sign over the sign of Richfield.

Q. I see. This was one of these big A-boards that belong to Richfield?

A. That's right.

Q. And Mr. Kawalski plastered something over it, and so you took it off the station?

A. Yes, sir.
Q. That was all that was involved?
A. Yes, sir.
Q. What was the situation with Mr. Carver?
A. The same thing.
Q. Mr. Carver had pasted something on Richfield's own piece of property that was loaned to Mr. Carver?
A. Yes, sir.
Q. So you had instructions to remove it?
A. Yes.
Q. And that is all?
A. That's right.

Mr. Paradise: That is all.

[fol. 2035] Redirect examination.

By Mr. Somerville:

Q. One question: Were there any dealers under your jurisdiction that were handling gasoline of Richfield on any basis except 100 per cent?

Mr. Paradise: Wait a minute. I object to that.
Mr. Somerville: I will withdraw that.

By Mr. Somerville:

Q. Were there any stations under your jurisdiction that handled any competitive gasoline?
A. No.

Mr. Paradise: May I object to counsel's use of the word "jurisdiction."
The Court: Well, with whom you dealt, not "jurisdiction."
The Witness: You mean, had Richfield and some other gasoline?
The Court: Yes.
The Witness: No.
The Court: All right.
Mr. Paradise: No further questions.
The Court: Step down.

(Witness excused.)

The Court: Now, we have had a very long day, gentlemen, and you will notice I improved my hours this afternoon. I didn't stay away so long. Things are easing up in chambers. [fol. 2036] Now, unless you have a very brief witness, we are ready to adjourn.

Mr. Somerville: We do have one, and I think we might as well get rid of him.

The Court: Where is he from?

Mr. Somerville: He is from Portland also.

The Court: Also from Portland. Now, make it brief. If you go too long, I will cut you off.

Mr. Somerville: I will guarantee it, your Honor.

The Court: All right.

Mr. DeMartini: That doesn't limit us, your Honor. We don't know who this witness is.

The Court: I am not talking to you. You are only a defendant. I can talk like a Dutch uncle to the government. If he opens up too much, why, we will continue over. We will see, anyway.

Mr. Somerville: I had a longer witness who really precedes him so far as order is concerned.

The Court: That is all right. We will put him on out of order. I have kept track of the witnesses and this is our twenty-ninth witness, according to my count.

[fol. 2037] Ronald D. Bowe, called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

The Clerk: What is your name, please?

The Witness: Donald D. Bowe.

The Clerk: Spell the last name?

The Witness: B-o-w-e.

By Mr. Somerville:

Q. Mr. Bowe, have you ever been the lessee of a Richfield service station?

A. Yes, I have.

Q. Are you now a lessee of a Richfield Service station?
A. Yes, I am.
Q. Where is that station located?
A. 8110 North Lombard.

Mr. Paradise: Will you speak a little louder, please?
The Witness: 8110 North Lombard.
The Court: Portland, Oregon?
The Witness: Portland, Oregon.

By Mr. Somerville:

Q. Do you also have a partner?
A. Yes, I do.
Q. Both of you have that lease together?
A. Yes.
[fol. 2038] Q. When did you enter into that lease?
A. Either October or November of 1948. I have forgotten which month.

Mr. Somerville: Will it be stipulated this is a Form 542 lease, dated September 29, 1948?
Mr. DeMartini: Yes, bearing print date 1-47.

By Mr. Somerville:

Q. Now, Mr. Bowe, at the time you took over the possession of this station, was it a new station?
A. Yes, it had just been built.
Q. And who turned over possession of the station?
A. Mr. Arnold Espey, one of the merchandisers in that district.
Q. Is he the man who negotiated the lease?
A. Yes.
Q. Was anything said at the time he turned over the possession concerning the products that you were to sell?
A. Yes.
Q. What was said with respect to whether you could sell or not sell particular products?
A. Well, it was listed as 100 per cent Richfield products and TBA.
The Court: Now, of course, we know from others, but tell us what you were told that that meant.

The Witness: Well, we should handle nothing but Rich-
[fol. 2039] field gas, oil, and greases, and our TBA would be gotten through a Richfield distributor.

The Court: A Richfield distributor. They were their sponsored products——

The Witness: Yes.

The Court: —that Richfield handled through their distributors?

The Witness: Yes.

The Court: All right.

By Mr. Somerville:

Q. Were you told the distributor to deal with?

A. Yes, we were told to deal with Bert Gates.

Q. And did Bert Gates supply you with any stock?

A. Yes, he supplied us with all our stock on the opening inventory.

Q. How much did you have invested in this station at that time?

A. You mean TBA and everything?

The Court: Well, everything.

The Witness: Everything,—approximately 5,000, I think.

By Mr. Soverville:

Q. That included equipment and merchandise?

A. Yes.

Q. Now, calling your attention to the stock supplied to
[fol. 2040] you by Mr. Gates, was there any stock there that was non-approved merchandise?

A. Well, most of it was approved merchandise. There was an item or two that wasn't on the approved list.

Q. What were those items, do you recall?

A. 50-foot hoses, regular garden hoses, and, right offhand, I can't think just what they were.

The Court: Were you selling those?

The Witness: No, just used them in the station to wash down the station.

By Mr. Somerville:

Q. Were there mufflers?

A. Oh, mufflers and tail pipes were not approved items.

Q. Subsequently did you call that to Mr. Gates' attention?

A. Yes. On the hoses I don't recall whether I did or not. On the tail pipes and mufflers.

Q. What did Mr. Gates say?

A. He said that was O. K.

Q. Subsequently did you have anyone from Richfield call your attention to the fact that they were unapproved items?

A. Yes, I did.

Q. Who called it to your attention, and when?

A. Well, Herb Miller, for one, and I think Arnold Espey. I couldn't say for positive who the other one was.

[fol. 2041] Q. Was that a short time after?

A. Right afterwards.

Q. What was said to you about that?

A. They were just mentioned to me, that they were not approved items on the list.

The Court: The same items that you mentioned?

The Witness: Yes.

The Court: I see. Did they tell you anything more about that?

The Witness: No.

The Court: What did they say,—to get rid of them?

The Witness: No.

The Court: Or replace them?

The Witness: There was nothing else said.

By Mr. Somerville:

Q. Did you purchase any more?

A. No, I don't think so.

Q. Generally speaking, have you since that time purchased only approved products, when available?

A. Yes.

Mr. Somerville: That will be all. I have kept my promise, your Honor.

The Court: All right. Just a minute. The other counsel

may want to ask you some questions. You are going too fast now.

[fol. 2042] Cross-examination.

By Mr. DeMartini:

Q. When you took this station, Mr. Bowe, were you advised at the time of the installation by the Richfield merchandiser that you would be expected to operate the station in accordance with Richfield policies?

A. Yes, sir.

Q. And you understood there was a 24-hour termination privilege in there?

A. Yes.

Q. And that could be exercised by Richfield if you did not operate the station in accordance with its policies?

A. Yes, sir.

Q. What is your present occupation?

A. I am a Richfield employee. I am a merchandiser.

Q. How did you come to be a Richfield merchandiser?

The Court: I presume he was promoted.

Mr. DeMartini: That is what I wanted to ask him.

The Witness: During the past couple of yours I have been requested—not requested, but asked several times if I would care for the merchandising job, and I finally accepted it.

My Mr. DeMartini:

Q. And you consider it a promotion?

A. Yes.

[fol. 2043] Q. When you——

The Court: Are you going to destroy the good business relations existing between you and this witness? I will report you to Charlie Jones.

By Mr. DeMartini:

Q. What did the $5,000 investment consist of?

A. Gas, petroleum products, and TBA, lubrication equipment or equipment at the station.

Q. When you left the station, did the incoming operator purchase most of that?

A. I still have the station.
Q. You still have the station?
A. Yes.

Mr. DeMartini: Oh, I am sorry.
The Court: He has a partner, he says, so evidently this partner is running the station, and you are doing the merchandising?
The Witness: Mostly, yes.
The Court: I see.

By Mr. DeMartini:

Q. What was this unapproved merchandise you referred to? What did it consist of?
A. A couple of garden hoses, mufflers and exhaust pipes. I think that was it, mostly.
Q. That is not unapproved merchandise?
A. No, it is approved merchandise, but——
[fols. 2044-2047] Q. It was just not——
A. It was made by the wrong companies.
Q. It is not on the credit card list, is it?
A. No, we can put them on credit cards, but they weren't made by the correct company that was approved by Richfield.
The Court: The hoses were not for sale, were they? You were just using them to keep the place clean?
The Witness: Yes.
The Court: The others were for sale?
The Witness: Yes.
Mr. DeMartini: Thank you. That is all.
The Court: Anything else?

Redirect examination.

By Mr. Somerville:

Q. You do get a salary now?
A. Yes.

Mr. Somerville: I see. That is all.
The Court: All right, gentlemen. We are going very fast. We will take our regular recess now until tomorrow morning at 10:00 o'clock.

(Whereupon, at 5:08 o'clock p. m., Wednesday, May 16, 1951, an adjournment was taken until 10:00 o'clock a. m., Thursday, May 17, 1951.)

[fol. 2048] Thursday, May 17, 1951. 10:00 A. M.

The Court: Cause on trial, gentlemen.
Call your next witness.
Mr. Somerville: The government calls Bert Gates.

Bert W. Gates, called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

The Clerk: What is your name, please?
The Witness: Bert W. Gates.
The Clerk: G-a-t-e-s?
The Witness: Yes, sir.
The Clerk: And is Bert spelled B-e-r-t?
The Witness: Right.

By Mr. Somerville:

Q. What is your name?
A. Bert W. Gates.
Q. Where do you reside?
A. Portland, Oregon.
Q. Mr. Gates, what is your present business?
A. I am a wholesale auto parts jobber.
Q. How long have you been in that business?
[fol. 2049] A. A little over five years.
Q. Have you ever operated a service station handling Richfield petroleum products?
A. Yes, sir.
Q. When?
A. I operated a service station from 1921 until January 1, 1946. I didn't handle Richfield all of that time, of course.

Q. Calling your attention to the period about 1944 or 1945, did you have a Richfield station?

A. Yes, sir.

Q. A station handling Richfield gasoline at that time?

A. Yes, sir.

Q. What sort of an arrangement did you have with Richfield, what sort of papers?

A. Well, I really don't know the type of contract, other than I owned the property and the improvements, and I leased to Richfield, and they, in turn, leased back to me, under what I believe has been referred to as a dealer contract.

Q. At any time, Mr. Gates, were you engaged in the capacity as an authorized TBA distributor, handling Richfield approved TBA merchandise?

A. Yes, sir.

[fol. 2050] Q. Did you have any contract, written contract, with Richfield concerning this distributorship?

A. No, sir.

Q. Did you have some sort of an oral understanding or arrangement?

A. Yes, sir.

Q. Would you tell us about the time that you first were approached concerning this distributorship?

A. As I remember, sir, it was in 1943.

Q. Who approached you concerning it?

A. Mr. Bradford.

Q. Where did that occur?

A. In my place of business.

Q. At your service station?

A. Yes, sir.

Q. What did he tell you at that time?

A. He asked me if I would be interested in being a TBA distributor for Richfield.

Q. At that time was there a TBA distributor designated in Portland?

A. Pardon? I didn't get that.

Q. At that time was there a TBA distributor in Portland, an authorized distributor for Richfield?

A. You mean other than myself?

Q. Yes.

[fol. 2051] A. Yes, a Mr. Radke was also a distributor.

Q. Mr. Bradford was the man that negotiated the terms of this arrangement?

A. Yes, sir.

Q. What did he tell you concerning the products that you would handle?

A. That I should handle the approved TBA products of Richfield.

Q. What, generally, were described as approved products?

A. Well, at that time, sir, it was mainly Goodyear tires and Goodyear batteries.

Q. Did you have any other discussions with any other representative of Richfield concerning your acting as TBA distributor?

A. Yes, sir, Mr. Foster.

[fol. 2052] Q. And who was Mr. Foster, sir?

A. Mr. Foster was the northwest head of the TBA setup for Richfield.

Q. Where were his offices?

A. In Seattle.

Q. Did you go to Seattle to talk to him concerning it?

A. I did in December of 1945.

Mr. Paradise: Of what year?

The Witness: December of 1945.

By Mr. Somerville:

Q. Was that at the Richfield offices there in Seattle?

A. Yes, sir.

Q. Were any other parties present?

A. No, sir.

Q. At that time had you actually started to engage in the business of handling the authorized products as a distributor of Richfield?

A. Not exclusively. I was still in the service station business at that time along with the TBA distributorship.

Q. At the time that you talked to Mr. Foster was there any discussion concerning the products that you could or could not sell to Richfield—well, to any type of service station handling Richfield gasoline?

A. Yes, there was this type of discussion.

Q. Will you tell us what Mr. Foster said in that regard? [fol. 2053] A. Mr. Foster informed me that if I expected to be—wanted to be a TBA distributor and to continue on as one, that I would have to handle only Richfield approved TBA products.

Q. And had you been handling other products along with Richfield?

A. No, sir.

Q. Did Mr. Foster at that time say anything about the particular outlets that you were to sell, about the particular outlets handling Richfield gasoline?

A. Well, we had quite a discussion at that particular time and they wanted the TBA distributors to go out of the service station business and go into the TBA distributorship exclusively, which we talked at quite some length about. And Mr. Foster agreed that if I would go out of my service station entirely and become an exclusive TBA distributor for Richfield, that the City of Portland would be divided 50 per cent for myself and 50 per cent for Mr. Radke.

Q. And was it Mr. Foster who designated the particular stations that you would supply?

A. The city was to be divided geographically.

Q. Did Mr. Foster make that determination or someone else?

A. Yes, sir.

Q. And approximately how many service stations were [fol. 2054] you to supply?

A. As I remember, at that time there was approximately 65 or 70 Richfield units in the City of Portland in the metropolitan area, and approximately half of those were to have been my stations that I was to serve.

Q. In these stations in your part of the geographical territory assigned to you—first, let me ask you a preliminary question. Are you familiar with what we mean when we refer to a leased out station? Do you know what type of station that is?

A. I believe I do, sir.

Q. Do you know what a dealer type of station is?

A. Yes, sir.

Q. That is a station which has a sales contract and paint agreement with Richfield?

A. Yes sir.

Q. You are aware of the distinction between the two classes?

A. You mean of your leased out station, the so-called L-O station?

Q. Yes, sir. With respect to the stations in your area, did it include stations of those categories?

A. Yes, sir.

Q. In the discussions with Mr. Foster was there anything said about whether you could sell competitive items to [fol. 2055] any stations?

A. Yes, sir.

Q. What was said?

A. That I was to handle only Richfield approved products.

Q. Thereafter you stocked approved products, did you?

A. Yes, sir.

Q. How would you order those products?

A. Well, some of them were ordered through Richfield, some of them from Goodyear Tire & Rubber Co.

Q. On those orders from Goodyear Tire & Rubber Co. were they ordered on Richfield's order blanks?

A. No, sir, other than tires and batteries.

Q. Where did you receive your supplies from Goodyear? Do you know how the shipments were made?

A. Yes. We received them from the Portland warehouse, Goodyear warehouse.

Q. Where did you receive the items that you ordered directly from Goodyear?

A. From the factories direct.

Q. Do you happen to know—take an item like tires, where did they come from?

A. They came from Goodyear Tire & Rubber Co. in Portland.

Q. Were they manufactured at that place, do you know?

A. No. That was their warehouse.

[fol. 2056] Q. Were you receiving any shipments of automotive accessories from outside the State of Oregon?

A. Yes, sir.

Q. What were some of those items?

A. Champion Spark Plugs, Purolator Oil Filters, and Max Polishes were some of them.

Q. After you stocked approved products, then you commenced supplying the needs of the particular station assigned you in your territory, is that correct?

A. Yes, sir.

Q. Mr. Gates, were you required to sumbit reports to anyone in the Richfield organization of the sales that you made of TBA products?

A. Yes, sir.

Q. To whom did you submit those reports?

A. To the office in Seattle. That would be, originally it was Mr. Foster, and he was succeeded by Mr. Buck.

Q. I show you Government's Exhibit No. 7 and ask you if that form or any form similar to that is the form that you used?

A. Yes, sir, that is the form that we used.

Q. With respect to that form, Mr. Gates, did you have any discussions with anybody concerning the amount of sales to any particular outlet you were supplying?

A. Yes, sir.

[fol. 2057] Q. Who would those discussions be with?

Mr. DeMartini: Will you fix the time, Mr. Somerville?

Mr. Somerville: Yes, I will do that.

A. Well, as I remember it now, we met approximately every Thursday morning at 12th and Sandy in Portland with the branch manager from Portland and his salesmen and merchandisers and Mr. Foster or Mr. Buck from Seattle if they were in the city.

[fol. 2058] Q. Now, who was the branch manager?

A. At that time it was Mr. Bradford.

Q. Approximately what period was he branch manager?

A. I believe from about '42 or '3 to 1947, somewhere in there.

Q. Now, were there any other people present at these meetings?

A. I don't quite understand.

Q. I say, at these Thursday meetings——

A. Yes.

Q. —who else would be present besides the branch manager? Give us some names.

A. Oh, some names?

Q. And their capacities, if you will.

A. Mr. Scollard, who was one of the salesmen, and Mr. Kenneth Miller, who was one of the merchandisers; also, a man by the name of, I believe, George Parish, and a man by the name of Lalande, he was a merchandiser. They were some of them. I don't remember all of them.

Q. And Mr. Radke, your co-distributor?

A. Yes, and Mr. Radke, of course.

Q. Now, was the nature of the discussions similar with respect to each Thursday meeting?

A. Very much on the same.

Q. And you discussed the particular problems encoun-
[fol. 2059] tered at the stations?

A. Yes, sir.

Q. At any of those meetings did Mr. Bradford say anything concerning the enforcement, or did he say anything in regard to whether the 24-hour termination provision,—first of all, were you aware of the fact that there was a 24-hour termination clause in the leases to L-O operators?

A. Well, I understood there was some cancellation there. Whether it was 24 hours, or 48 hours, I didn't know, sir.

Q. Were there some discussions concerning that?

A. Mr. Bradford made the statement at the start of this expanded TBA program that he was going to put over this program if he had to check out every operator in the city of Portland.

Q. Did he explain at that time whether non-approved merchandise would be authorized for any station?

A. Not to my knowledge, it was never authorized by——

Mr. Paradise: I didn't hear that last statement.

The Witness: I said that, to my knowledge, was never authorized by any Richfield representative.

Mr. Paradise: May I ask that the question also be read?

(The record was read.)

The Court: You are repeating his statement?

[fol. 2060] The Witness: I beg pardon?

The Court: You are repeating his statement?

The Witness: Mr. Bradford's statement?
The Court: Yes.
The Witness: Yes, sir.
The Court: All right.

By Mr. Somerville:

Q. Now, I believe you testified that you did discuss this report of sales at these Thursday meetings?
A. Yes, sir.
Q. Would you be questioned concerning sales of any particular dealers or operators?
A. Yes, sir.
Q. What would be the nature of the questions that were raised?
A. Well, it showed on those reports the number of spark plugs, and tires, and batteries, and if some particular station of mine happened to be low, that is, purchases had been low for the month previous, I was usually questioned about it, as to why I hadn't sold him more.
Q. Were you questioned concerning whether those outlets were handling competitive merchandise?
A. Yes, sir.
Q. Were there some instances in which there were competitive items?
[fol. 2061] A. Yes, sir.
Q. And you would make a point of reporting those?
A. Yes, sir.
Q. They would be discussed?
A. Yes, sir.
Q. And some action taken with respect to them?

Mr. DeMartini: I will object to that as calling for a conclusion of the witness.
Mr. Somerville: I will withdraw that.

By Mr. Somerville:

Q. Calling your attention to a service station operated by a Mr. Fredrickson, at 3441 North Vancouver Avenue, Portland, are you familiar with that station?
A. Yes, sir.
Q. And that station, is that a leased out station?

A. Yes, sir.

Q. During this particular period at those Thursday meetings, was there ever any occasion in which anything was said about the merchandise handled by Mr. Fredrickson?

A. Yes, sir.

Q. About when did that occur?

A. As I remember it, probably early in the spring of 1947.

Q. Now, what was said at the meeting about Mr. Fredrickson?

[fol. 2062] Mr. Paradise: And by whom?

Mr. Somerville: Yes, indicate by whom.

The Witness: The discussion came up about Mr. Fredrickson having Gates fan belts in stock. I was asked why he hadn't——

By Mr. Somerville:

Q. By whom?

A. I beg pardon?

Q. You were asked by whom?

A. I was asked by Mr. Bradford why Mr. Fredrickson was stocking Gates fan belts instead of Goodyear fan belts, which was the Richfield approved line of fan belts. And I explained that he had refused to change to Goodyear, that he liked Gates belts better than he did Goodyear's, and had refused, so far as I was concerned, to change to the approved line.

Q. Did he ever tell you why he liked the Gates fan belts?

A. No, sir.

Q. Was there any action taken at that meeting, or any instructions given to you, or anybody else, with respect to Mr. Fredrickson?

A. Yes. Mr. Bradford instructed Mr. Miller, who was the merchandiser, to talk to Mr. Fredrickson. He made an appointment with me to meet him later that morning at Mr. Fredrickson's station, which I did.

[fol. 2063] Q. You did. And what occurred at that time?

A. And Mr. Miller informed Mr. Fredrickson that Gates fan belts were not an approved Richfield product, and that he expected him to change over to Goodyear fan belts.

Q. Did Mr. Fredrickson then begin to purchase the approved products?

A. Mr. Fredrickson O. K.ed for me to change over the sleeve on his Gates fan belts, and fill them in with Goodyear belts, which I did, and sold him Goodyear belts from that time.

Q. With respect to the belts that were in the station, with reference to the Gates belts, did you do anything about them?

A. Yes, sir.

Q. What did you do?

A. It is a common practice among all manufacturers of fan belts to have a blank sleeve, where you can make a change-over, and you take off the sleeve and change the number to the line you are changing to, and that is what I did, sir.

Q. Calling your attention now to a service station operated by Herman Eppard, at 6005 North Alvina Street, in Portland, do you know of this dealer?

A. Yes, sir.

Q. Was he at that time operating a leased out station?

[fol. 2064] A. Yes, sir.

Q. During these Thursday meetings was there ever any discussion about competitive products at that station?

A. Yes, sir.

Q. About when, to your knowledge, was that discussion had?

A. Oh, I would say approximately over a period, over the year of 1947, as I remember it now.

Q. Do you recall just what the nature of those discussions was?

A. The problem there seemed to be batteries.

Q. Specifically, what was the problem?

A. Well, Mr. Eppard,——

Mr. Paradise: May I suggest that we have the conversations, please?

The Court: That is what he is starting to do, to give the conversations.

By Mr. Somerville:

Q. Yes, tell us what was said.

A. The problem there was over batteries. Mr. Eppard had refused to carry Goodyear batteries, and was carrying a competitive line of batteries.

Q. Did you report that to the meeting?

A. Yes, sir.

Q. O. K. What else was said?

A. Well, there was considerable discussion about it, but [fol. 2065] Mr. Eppard seemed to be very determined that he was going to handle a competitive line of batteries, and inasmuch as he had taken a station that had never been, as I understood it, anyway, never had been very much so far as gasoline sales was concerned——

Mr. Paradise: I move that be stricken as obviously the conclusion of the witness.

The Court: You are repeating what he told you?

The Witness: Yes, sir.

The Court: What he said was the reason?

The Witness: You mean Mr. Eppard's reasons?

The Court: Yes.

The Witness: No, sir, not Mr. Eppard.

The Court: What are you starting to tell us?

The Witness: I was starting to tell you the conversation that took place at 12th and Sandy, pertaining to this particular account.

The Court: Who made the statement that you started to tell us about?

The Witness: Mr. Bradford did.

The Court: All right. Go ahead. Tell us what he said.

The Witness: That this station had never done very well on gasoline, and Mr. Eppard had been able to produce very fine gallonage, had a very nice gallonage there, and that [fol. 2066] that perhaps we had better overlook some of the other things, and the matter so far as batteries was dropped at that time.

[fol. 2067] By Mr. Somerville:

Q. Subsequently did you sell Goodyear batteries at this station?

A. No, sir. I never did sell any Goodyear batteries as long as I was distributor.

Q. Calling your attention to a service station operated by Mr. Frank Harding.

A. Yes.

Q. Was there ever any discussion about this station?

A. Yes, sir.

Mr. Paradise: Will you stipulate, counsel, this was also a leased out station?

By Mr. Somerville:

Q. Do you know whether this was a leased out station?

A. I can't say definitely. I don't know whether it was or was not.

Mr. Somerville: It may be stipulated that this was a leased out station.

Mr. Paradise: That it was an L-O station?

Mr. Somerville: Yes, sir.

Mr. Paradise: Thank you.

By Mr. Somerville:

Q. Was there any discussion concerning the allocation of tires to this station?

A. Yes, sir.

Q. This was in a period during some shortage, was it not? [fol. 2068] A. Yes, sir.

Q. What was said about the allocation of tires as far as Mr. Harding was concerned, and by whom? Try to fix who said what to whom.

A. That station came up for discussion at one of our meetings at 12th and Sandy. It was during 1946 when tires were scarce and hard to get. Mr. Harding wanted tires but he didn't want to buy practically anything as far as the other part of the TBA program was concerned. I reported this to Mr. Bradford and Mr. Bradford informed me that unless—that I was to inform Mr. Harding that unless he wanted to program on the rest of the TBA program, why, he was to get no tires. And that was the instructions that I followed out.

Q. Do you happen to know, Mr. Gates, who owned the property there?

A. Well, I understood Richfield did. I don't know that to be a fact, though.

Q. Do you happen to know who owned the service station building?

Mr. DeMartini: I will object to this as being immaterial.

Mr. Paradise: It has been stipulated that this is a Richfield L-O station.

The Court: Yes. I do not think you need to inquire into that.

Mr. Somerville: Yes. I will drop that.

[fol. 2069] Q. Going back now to the arrangements that you had with Richfield and your practice in ordering Goodyear products or authorized products, did you receive commissions on sales of TBA products?

A. Yes, sir.

Q. On all items?

Mr. Paradise: I thought his answer was "no." I can't hear over here.

The Witness: Oh, I am sorry.

The Court: Loud enough so we can hear you.

The Witness: I seem to be getting a little bit hoarse here for some reason. May I have the question again, sir?

Mr. Somerville: Would you read it, Mr. Reporter, please?

(Question read.)

A. On all except one, sir, that I remember.

Q. Who did you receive those commissions from?

A. Well, it was a percentage that we—difference between our cost and what we sold it at.

Q. That would be the difference between what you purchased from Richfield or through the Richfield and the price that you sold it at?

A. Yes, sir.

Q. Were there suggested resale prices?

A. Yes, sir.

Q. And who submitted those to you?

[fol. 2070] A. The factories or Richfield themselves.

Q. What was the one item you did not receive a commission on?

A. Some bug spray.

Q. And that bug spray, was that an item that you were told to handle?

A. Yes, sir. We were not——

Q. By whom?

A. They insisted that we handle it.

Q. By whom?

A. Mr. Bradford, or I don't believe Mr. Bradford was branch manager at that time. I believe it was Mr. Cresswell that was branch manager at that time.

Q. And about when would that be?

A. 1947, I believe it was, or '48. I am not too sure.

Q. Did he say anything with respect to whether the service stations handling Richfield gasoline would be required or not required to take this merchandise?

A. I don't quite understand you.

Q. Did he say anything about pushing the sale? Did he say anything about disposing of it to Richfield stations?

A. Well, we didn't do the selling of the spray. The Richfield merchandisers were the ones that did the selling of that when they first came out with it. Mr. Bradford definitely——

[fol. 2071] Mr. Paradise: You have answered the question.

Mr. Somerville: Wait a minute. "Mr. Bradford definitely"—finish that out.

A. Mr. Bradford definitely stated at 12th and Sandy that every Richfield station in the City of Portland was going to have it and, to my knowledge, they all did. All we did was deliver it, sir.

Q. Mr. Gates, did you have a warehouse?

A. Yes, sir.

Q. In which you kept certain stock on hand?

A. Yes, sir.

Q. Did anybody from Richfield ever come out to your place of business and look over that stock?

A. Yes, sir.

Q. Who?

A. Mr. Foster and Mr. Buck, his successor.

Q. And how frequently did they do that?

A. Oh, whenever they were in Portland, which usually was every month or six weeks.

Q. Was there ever any discussions involving the stock that you had there?

A. Yes, sir.

Q. And about when did such discussions occur?

A. Well, at any interval that they happened to be there, if I happened to have merchandise in the warehouse that had not been purchased either from Goodyear or Rich-
[fol. 2072] field I was open to some very severe criticism from particularly Mr. Buck.

Q. What would he say?

A. Well, why hadn't I bought it through Richfield? After all, I was a TBA distributor and I was expected to buy those things from Richfield, not some place else.

Q. Did he give you any instructions about whether or not you could sell them to service stations in your territory?

A. No. Most of them were approved items.

Q. I mean the non-approved items?

A. Well, yes. He didn't like for me to sell anything that wasn't an approved item to any Richfield station.

Q. Did you at any time during that period here, as authorized TBA distributor, stock items that were directly competitive to some items approved by Richfield? For example, did you ever stock such items as tires, batteries, fanbelts, battery cables, spark plugs, or the common accessories which were competitive to Goodyear brands or approved brands, such as Purolator oil filters, and tell us what the situation was there?

A. I did.

Q. Did you have any conversations with anybody concerning that practice?

A. Yes, sir.

[fol. 2073] Q. With whom?

A. Mr. Buck.

Q. When?

A. I know in 1948.

Q. What did he say?

A. Well, he objected to it.

Q. Calling your attention to a service station operated by Mr. Bowe and Daugherty—I think they are partners there—8110 North Lombard Street, Portland, Oregon, are you familiar with that station?

A. Yes, sir.

Q. Do you happen to know whether that was a new station?

A. Yes, sir.

Q. Do you know when it opened up?

A. Yes, sir.

Q. When?

A. I believe in October, September or October of 1948.

Mr. Somerville: May the record show that that was a leased out station and that Mr. Bowe was the man who testified yesterday?

Mr. DeMartini: So stipulated.

By Mr. Somerville:

Q. Did you supply this station with its initial stock of approved items?

A. Yes, sir.

[fol. 2074] Q. In supplying it did you supply any non-approved items?

A. Yes, sir.

Q. What were those items?

A. As I remember it now, some brake fluid, some mufflers and tail pipes.

Q. Did you discontinue voluntarily your distributorship?

A. No, sir.

Q. What were the circumstances of your leaving the distributorship?

A. Mr. Buck, from Seattle, and Mr. Mark Anderson, who was the Portland branch manager at that time, came out to my place of business.

Q. Was this approximately at the same time that you made these sales to Bowe and Daugherty?

A. Yes, sir.

Q. What was said? What transpired?

A. Well, they just came out to my place of business and asked me if I would go out and have a cup of coffee, which

we did, and during the process of having our coffee Mr. Buck informed me—the way he said it was that the powers that be had decided that there should only be one TBA distributor in the City of Portland. And I asked him if that meant I was out and he said, "yes," that it did.
[fol. 2075] Q. When were you to go out?
A. As of right then.
Q. Was anything said in those discussions concerning sales you made to the Bowe Daugherty station?
A. Yes, sir, it was discussed.
Q. What did they say?
A. They asked me why that I had sold them a competitive brand of brake fluid.
Q. Was there anything said about your having non-approved stock in your warehouse?
A. Well, they never had approved of that.
The Court: When they gave you notice—a very short one at that—did they tell you why? Did they tell you whether your failure to limit yourself to items, and allowing stations to buy non-approved items had anything to do with the decision to give the entire territory to one man?
The Witness: Not directly, your Honor.
The Court: Not directly. All right.

By Mr. Somerville:

Q. How much investment did you have in the stock, Mr. Gates.
A. As I remember it now, some twelve or fourteen thousand dollars.

Mr. DeMartini: I will object to this as immaterial, your Honor. This has no bearing on the case.
The Court: Well, not a direct bearing. Go ahead. He [fol. 2076] has already answered it. It may remain. I do not want you to go into any details.
Mr. Somerville: All right. I do not desire to.

Q. What did you do after that? Did you get into another business or what?
A. Yes, sir.
Q. What was the nature of your business after that?
A. The business that I am in today. I handle accessories,

some accessory lines. I major in parts, machine shop service to other garages and service stations in Portland.

The Court: What do you call your business?

The Witness: Gates Auto Supply.

By Mr. Somerville:

Q. What products——

The Court: I do not think you need to go into that.

By Mr. Somerville:

Q. Did you acquire additional stocks then after the termination of your distributorship?

A. Yes, sir.

Q. After you were terminated as a TBA distributor did you then make an effort to sell some of the accounts of Richfield, the stations that were in your territory as a TBA distributor?

A. Yes, sir.

Q. Calling your attention to a station operated by Fred Erz, 630 Northeast Union Avenue in Portland, did you call on this station?

A. Yes, sir.

[fol. 2077] Mr. Paradise: Mr. Somerville, may I ask that you delay your examination for one moment? Is Mr. Gates mentioned as one of the competitor suppliers in the interrogatories?

Mr. Somerville: Yes, sir. I thought I had notified you to that effect.

(Counsel conferring privately.)

The Court: All right.

Mr. DeMartini: Go ahead.

Mr. Somerville: With respect to the station operated by Mr. Erz, is it stipulated it is a leased out station and was during the time?

Mr. DeMartini: So stipulated.

By Mr. Somerville:

Q. Did you later contact Mr. Erz after your termination with respect to his purchasing any products?

A. Yes, sir.

Q. Did you attempt to sell him any particular products?

A. I attempted to sell him Gates fan belts which I had taken on after the termination of the TBA contract with Richfield.

Q. Did Mr. Erz buy these fan belts?

A. No, sir.

Q. Did he say anything about his desire to buy them?

A. Yes, sir.

Q. What did he say?

[fol. 2078] A. He said he would like to handle Gates fan belts but he was not allowed to because it was not an approved Richfield TBA product.

Q. Have you been on friendly terms with Mr. Erz?

A. Yes, sir.

Q. Mr. Herman Eppard, at 6005 Albino in Portland, did that gentleman have a service station handling Richfield products at that time?

A. Yes, sir.

Mr. Somerville: May it be stipulated this was an L-O stations?

Mr. Paradise: Yes, that this was one of Richfield's L-O stations.

[fol. 2079] By Mr. Somerville:

Q. Mr. Gates, calling your attention to this station now, did you make an effort to sell any products at this station?

A. Mr. Eppard's station?

Q. Yes.

A. Yes, sir.

Q. What were the circumstances of your calls at that station?

A. Well, we endeavored to sell him fan belts, and met with about the same circumstances we met with Mr. Erz.

Q. Did you notice anything with respect to batteries at that station?

A. I didn't quite get the point.

Q. I say, was there any condition concerning batteries at this station?

A. At Mr. Eppard's?

Q. Yes, sir.

A. You mean before or after—when I was a distributor, or afterwards?

Q. Well, did you make any effort to sell batteries at this particular visit?

A. Not at that particular time, I didn't, no, but I did at a later date.

Q. How much later?

A. Oh, I would say several months. Probably in the [fol. 2080] early part of 1949.

Q. Did you sell him any batteries?

A. No, sir.

Q. Did he say why?

A. Because he wasn't allowed to handle a competitive make battery, and finally was convinced he should handle Goodyear batteries.

Q. Was there any particular reason for your trying to sell him batteries at that time?

Mr. Paradise: I object to that as immaterial. I will withdraw the objection.

The Court: Well, I will sustain it now. I don't like it either.

By Mr. Somerville:

Q. Did he indicate why he preferred other brands of batteries?

A. I don't remember about that, sir.

Q. Calling your attention to Bowe & Daugherty station, that you referred to earlier, did you go back to that station?

A. Yes, sir.

Q. Did you attempt to sell any of your products at that time?

A. Yes, sir.

Q. At what time did you go back there?

A. Well, my salesman made regular weekly calls on all [fol. 2081] of these stations.

Mr. Paradise: Now, I move that that be stricken unless the particular stations are identified.

By Mr. Somerville:

Q. Let's confine your testimony here to any you made yourself to this service station after the termination of your distributorship. Did you make a personal call?

A. Yes, sir.

Q. Did you endeavor to sell some products there?

A. Yes, sir.

Q. What products did you try to sell?

A. I don't remember exactly now what I did attempt to sell, that is, what particular line I attempted to sell.

Q. Whom did you talk to there,—Mr. Bowe or Mr. Daugherty?

A. Why, to both of them. I talked both to Mr. Bowe and to Mr. Daugherty.

Q. And this is the station you had stocked originally?

A. That's right.

Q. What did they say about buying your merchandise?

A. No, that they were buying from Mr. Radke, the Richfield TBA distributor.

Q. Did they indicate why they would not buy from you, other than that?

A. Well, they said they weren't buying from anybody [fol. 2082] else but him.

Mr. Somerville: I think that will be all.

Cross-examination.

By Mr. DeMartini:

Q. What was the period that you were a TBA distributor at Portland, again?

A. Well, as I remember the dates, from approximately the first part of '43 until October, 1948.

Q. What was the manner of your approach to a service station in the sale of your products?

A. Well, now, do you mean——

Q. I mean, what was your everyday routine of business.

A. Do you mean, did we attempt to so-call high-pressure them, or sell them something?

Q. Well, you tell me.

A. Well, my method was to endeavor to sell them their needs, not in any way to high-pressure them at all.

Q. You bought these products from Richfield, and, in turn, sold them; is that correct?

A. That's correct.

Q. In other words, you solicited business wherever you could get it?

A. That's right.

Q. Did you sell products to stations other than those [fol. 2083] handling Richfield products?

A. Yes.

Q. How much of your business was to stations other than Richfield stations?

A. Oh, I would say approximately 80 per cent probably.

Q. I didn't get that 80 per cent. Was that to Richfield stations?

A. To other than Richfield stations.

Q. To other than Richfield stations?

A. Yes, sir.

Q. So that only 20 per cent was to Richfield stations?

A. That's right; approximately.

Q. With respect to the Richfield stations to whom you sold or attempted to sell, and with whom you were unsuccessful, you made no effort to tell them that they had to buy, or to instruct them or notify them that they would be dispossessed from their station if they wouldn't buy?

A. No, sir.

Q. So you just fulfilled the capacity of a salesman, insofar as they are concerned?

A. That's right.

Q. Did you at all times sell only the authorized line?

A. That's correct.

Q. You did carry other lines?

A. That's correct.

[fol. 2084] Q. And did you sell to all types of Richfield stations within the area?

A. Yes, sir.

Q. Now, you have testified as to certain discussions at these meetings with respect to Fredrickson, Eppard, Hardy, and Daugherty. Do you recall any discussions with them respecting any other L-O operator?

A. No, I don't, sir.

Q. You don't recall any discussions with respect to any other Richfield dealer?

A. Not any specific one, no, sir.

Q. When Mr. Bradford stated in these meetings that he would check out every operator who didn't handle the approved merchandise, it was your understanding he was referring to the L-O operators; is that correct?

A. Yes, sir.

Q. You stated that you made a commission on these sales. That is not strictly correct, is it? You bought the products,——

A. That's right.

Q. —and resold them. So what you refer to as a commission was your profit——

A. That's right.

Q. As between the purchase and sales price?

A. Yes.

[fol. 2085] Q. And many of these articles were what is commonly referred to as fair traded, so that you had to resell them at the price designated by the manufacturers?

A. Yes, sir.

Mr. Somerville: I object to that.

Mr. DeMartini: You brought up the matter yourself.

The Court: Go ahead.

By Mr. DeMartini:

Q. Is that correct?

A. You mean pertaining to the commissions, sir? Or the fair trading?

Q. That is correct.

A. Yes, sir.

Q. You stated that you yourself did not sell the bug spray?

A. No, sir.

Q. Was that sold by the merchandisers?

A. Yes, sir.

Q. Now, with respect to your deal with Richfield, you had no contract of any nature at all; is that correct?

A. No written contract, no.

Q. What was your oral contract?

A. The oral contract was just as I explained a while ago, that I would be a TBA distributor provided I would stock TBA merchandise.

Q. There was no term fixed?

[fol. 2086] A. No, sir.

The Court: When you were checked out, or maybe you do not apply those words "checked out" to a high position like yours, they gave you the inventory value of their merchandise, didn't they?

The Witness: No, sir.

The Court: You mean you kept your stock? You kept the Richfield stock?

The Witness: Your Honor, you mean the Richfield Oil Company gave me what my investment was in the stock?

The Court: In the stock that you had taken from them.

The Witness: No.

The Court: Oh, they did not. They let you dispose of it as best you could, is that it?

The Witness: Well, I forced their hand, and they made arrangements with the other TBA distributor to take it off of my hands.

The Court: I see. I just wanted to know how you were closed out.

By Mr. DeMartini:

Q. Wasn't it true, Mr. Gates, that there was some dispute between you and Mr. Radke as to the division of Portland?

A. Yes, sir.

Q. And that was one of the reasons which led up to the, say, the termination of your distributorship?

[fol. 2087] A. No, sir.

Q. That was not one of the reasons?

A. No, sir.

Q. Wasn't it true that this station of Bowe & Daugherty was more or less on the borderline between your two territories?

A. No, sir.

The Court: Did you ever have any conversations as to that station, except as to allowing non-approved items?

The Witness: Yes, sir.

The Court: What was that?

The Witness: They wanted to know why I had sold so-called competitive items.

The Court: I don't think you understood my question. Did they ever talk to you about this not being in your territory, as indicated by Mr. DeMartini in his question?

The Witness: No, sir. No, sir.

The Court: All right.

By Mr. DeMartini:

Q. When your distributorship was terminated, did you sell your stock, or part of your stock to Radke; is that correct?

A. That is correct.

Q. And it is also true that of your business 80 per cent of it was to non-Richfield stations; is that right?

A. That's right.

[fol. 2088] Q. You are now in business again to a limited extent as a TBA distributor, at least you call on service stations?

A. Yes, sir.

The Court: But he has a broader field.

By Mr. DeMartini:

Q. But within that field there is the more limited field of the TBA distributor; is that correct.

A. That's right.

Q. You do sell service stations within the Portland area?

A. That's right.

Q. And you do sell in competition with Mr. Radke now; is that correct?

A. Yes, sir.

Q. Do you sell any Richfield stations?

A. Yes, sir.

Mr. DeMartini: That is all.

The Court: Any redirect?

Redirect examination.

By Mr. Somerville:

Q. With respect to the division of territory, you testified you had some dispute. The original understanding, as I understood your earlier testimony, was that you were to have 50 per cent of the stations. Did you have 50 per [fol. 2089] cent?

A. No, sir.

Q. Did you have anywhere near 50 per cent?

A. No, sir.

Q. And you sold to the accounts——

Mr. DeMartini: I will object to this line of testimony, your Honor.

Mr. Somerville: That is all.

The Court: All right.

By Mr. Somerville:

Q. Not all of your items were fair traded, were they?

A. No, sir.

Mr. Somerville: That is all.

(Witness excused.)

The Court: We will take a short recess.

(A short recess was taken.)

[fol. 2090] The Court: All right.

Mr. Somerville: If the court please, we would like to recall Mr. Gates for another question or two on redirect in connection with a point or two on cross.

The Court: All right.

Bert W. Gates (Recalled).

Redirect examination.

By Mr. Somerville:

Q. Mr. Gates, in response to a question by Mr. DeMartini as to whether or not you were selling any Richfield

accounts your answer was "yes." Would you now tell the court whether you were making very many sales to Richfield accounts?

A. Very few.

Q. What type of sales are you making?

A. Well, about the only chance that we have to sell them——

Mr. Paradise: I submit that that question is ambiguous and vague.

The Court: Yes.

By Mr. Somerville:

Q. Specifically, what are the products and the brands that you are primarily able to sell to stations handling Richfield gasoline?

A. Purolator oil filters, Champion spark plugs, Max polish, Warner products. In other words, they are ap- [fol. 2091] proved TBA items that are approved by Richfield.

Q. Is there any marked identification on approved merchandise to indicate its source?

A. Not to my knowledge, no.

Mr. Somerville: That is all.

Mr. DeMartini: No questions.

The Court: All right, step down. Call your next witness.

Mr. Somerville: The Government calls Mr. Hurst.

James W. Hurst, called as a witness by the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: What is your name?

The Witness: James W. Hurst.

Direct examination.

By Mr. Somerville:

Q. What is your name, sir?

A. James W. Hurst.

Q. And where do you reside?

A. Portland.

Q. What business are you in at the present time?

A. Insurance.

Q. Have you ever been a lessee of a service station from the Richfield Oil Corporation?

A. I have.

Q. When did you enter into such a lease?

[fol. 2092] A. In July of 1945.

Mr. Somerville: May it be stipulated, counsel, that Mr. Hurst entered into a lease on Form 542, print date 11-44, bearing date July 20, 1945, and a subsequent lease on Form 542, print date 11-44, dated March 24, 1946?

Mr. DeMartini: So stipulated.

By Mr. Somerville:

Q. Where was the location of this station?

A. 1237 Southeast Hawthorne.

Q. Who turned over the premises to you?

A. Mr. Miller and Lalande, as I remember.

Q. Who were these gentlemen?

A. They were merchandisers for Richfield.

Q. Were they the men that you dealt with in negotiation of the lease?

A. Yes.

Q. And at the time that the station was turned over to you did you invest anything in the station?

A. Did I invest anything?

Q. Invest anything in the station.

A. Yes.

Q. What was your investment?

A. 1300 approximately.

Q. What did that include?

A. Well, that was for stock of merchandise that was on [fol. 2093] hand.

Q. At the time the lease was negotiated was there any mention made of 24-hour termination clause?

A. No.

Q. At the time that you were installed by Mr. Lalande and Mr. Miller was there anything said about what products you should handle?

A. No, not at that time.

Q. Were there any conversations with Richfield representatives subsequently?

A. Well, after my lease came through—it was approximately a month later—I signed a lease on it, why, then after that lease was signed, why, then I was told that I would be—I was supposed to handle only approved Richfield products, their TBA approved products and, of course, Richfield oil and gasoline.

Q. Calling your attention to Champion spark plugs, are those approved items?

A. Yes.

Q. Who is your authorized TBA distributor?

A. Ed Radke.

Q. Did you purchase spark plugs from Mr. Radke?

A. At times, yes.

Q. Was there ever any situation where you did not purchase them from Mr. Radke?

[fol. 2094] A. Yes. Along in—oh, I would say February and March of 1946, I know I made an order in the middle of the week for several things, including plugs, and they were not delivered. They were supposed to be delivered on a Friday, and Saturday being usually a big day for us, why, when this merchandise had not been delivered, why, then I had to go out and buy elsewhere on the orders that I had. I was completely out of plugs, a certain type of plugs, at that particular time.

Q. Where did you buy these plugs?

A. I believe from Colliers' at that particular time.

Q. What brand of plugs were they?

A. Champion. They were an approved brand.

Q. Subsequently did any incident occur concerning your purchase of these plugs?

A. Well, yes. I told the—I had a fellow operating the station for me. I bought the station as an investment and he was operating it for me. I told him when Radke came through with that delivery to refuse acceptance of that merchandise because I had already bought the things that I did need. So on Monday, why, he brought them out for delivery and a couple of days later, why, I was called into Mr. Bradford's office, who was the branch manager, and

called in by Armand Lalande, who was one of the merchandisers, to appear in Bradford's office the following morning.

[fol. 2095] Q. And did you appear?

A. Oh, yes, I did.

Q. What, if anything, did Mr. Bradford say? Was there anybody else present?

A. Mr. Lalande and Mr. Bradford.

Q. What, if anything, was said by either of these gentlemen concerning these spark plugs?

A. Well, they told me that I should buy strictly from Radke, from no one else, and that if I didn't, why, I would be dumped out within 24 hours.

Q. Were they aware that you had turned back the order from Radke?

A. Yes, I think that is why it was brought up.

Q. After that incident did you buy spark plugs from outside sources?

A. Oh, yes, various other places.

Q. Did you openly display these?

A. Yes.

Q. Were they also Champion spark plugs?

A. Entirely.

Q. From whom did you buy these spark plugs?

A. I bought from Gunn & Co. and from Wynn-Hart.

Q. Was there any particular advantage to you in handling these plugs from a source other than the authorized TBA distributor?

[fol. 2096] A. Yes. I was able to buy them in any small amount, even, 29 cents, where I would have to pay 36 for the same plug from Radke.

[fol. 2097] Q. Was there ever any situation in which Mr. Radke was unable to supply you with batteries?

A. Oh, yes, the battery shortage came along in '46.

Q. At that time did you make attempts to get batteries from other sources?

A. Oh, I did, yes.

Q. Subsequently did you receive any communication from anyone concerning the authorized batteries being available?

A. Well, late in '46, yes, when batteries did become available, and I was told by Radke that I should dispose of the

batteries I had in stock and stock from there on out only Goodyear batteries.

Q. Was there any particular advantage to you in handling any competitive batteries?

A. No, I wouldn't say any advantage there. I was able to get them at times previous to that, when they were not available, through Radke.

Q. Calling your attention to Green Stamps, stamps that were given to customers, did you handle those stamps?

A. For a while, yes, when I first went into business.

Q. Did you then discontinue them?

A. I did.

Q. Was there anything said to you about—to you by any Richfield representative concerning your handling those [fol. 2098] stamps?

A. Well, after I dropped them, they were down on my neck all the time about starting to give them away again. They were after me continually.

Q. Did you have to pay for these stamps?

A. Oh, yes.

Q. How much did you have to pay for them?

A. They came in books of $500 worth of stamps. It cost me $15 per book.

Q. With respect to such items as light bulbs, did you get any light bulbs from any unauthorized source?

A. Oh, yes.

Q. Were they the same brand?

A. The same brand, approved brand.

Q. Was there any price advantage on those?

A. A cheaper price.

Q. Did you handle any competitive lubricating oil?

A. No.

Q. Was there ever any conversation with any representative of the Richfield Oil Corporation concerning your handling of outside oils?

A. Well, I was told, you know, after I had signed my lease, that I shouldn't handle any competitive brand other than TBA approved, or, other than Richfield oil and gas.

Q. Did you have any customers that called for it?

[fol. 2099] A. Occasionally, yes.

Q. Did you desire to handle any outside oil?

A. Well, I would have liked to have done so, but I didn't.

Q. Calling your attention now to oil filters, did you handle any outside oil filters at that time?

A. Yes.

Q. What brand of oil filters?

A. Fram, in addition to Purolator.

Q. Did you have any particular calls for Frams?

A. Yes.

Q. Was there any particular price advantage on Frams?

A. Well, I wouldn't say there was a price advantage because Radke, as a TBA distributor, did not handle them. So I don't know if there would have been any price advantage on Fram or not. It was simply for customer convenience.

Q. Mr. Radke did handle the Purolators, didn't he?

A. Yes, sir. I could buy Purolators much cheaper than I could buy them from Radke.

Q. Did you leave the station voluntarily?

A. Yes I did.

Q. At the time you took over the station, did you purchase tools and equipment?

A. Some.

Q. At the time you left the station, did you sell your tools [fol. 2100] to anyone?

A. I sold them to the man who bought me out, Mr. Severson.

Q. Was there anything said—who, if anybody from Richfield, supervised the inventory at the time you left the station?

Mr. Paradise: That assumes a fact not in evidence, and a conclusion of the witness.

Mr. Somerville: That is all right, counsel. I will rephrase the question.

By Mr. Somerville:

Q. At the time you left the station, did anybody from Richfield say anything to you about your ability to sell these tools and equipment to the new operator?

A. Yes, Mr. Bill Carpenter.

Mr. Paradise: I object. Just a moment, Mr. Hurst.
The Witness: O. K.
Mr. Paradise: He asked if these were conversations.
The Witness: Yes.

By Mr. Somerville:

Q. With whom were those conversations?
A. Bill Carpenter, a Richfield merchandiser.
Q. About when was it you left the station, now?
A. That was the 1st of May, 1948.
Q. What did Mr. Carpenter say?
[fol. 2101] A. Well, Mr. Carpenter told me that the fellow, whoever purchased my stock there, that Richfield would only require him to buy those things that were TBA approved, that hand tools and other equipment that I had bought I would have to sell on my own.

Mr. Somerville: I think that is all.

Cross-examination.

By Mr. DeMartini:

Q. How did you become interested in this station, Mr. Hurst?
A. Through a friend of mine.
Q. What were you doing prior to that?
A. I had charge of installation of electric cable in Vancouver.
Q. To whom did you talk first with respect to this station, with which Richfield employee?
A. Ken Miller.
Q. When was that conversation?
A. That was in July, of 1945.
Q. What did you talk about?
A. I beg pardon?
Q. What was the conversation?
A. Well, I was told that the station was for sale, and he told me the type of money that could be made in this [fol. 2102] particular station.
Q. Did you discuss at all the nature of the operation of the station?

A. No, I wouldn't say so.

Q. Well, did you discuss at all the terms of the lease?

A. Nothing more than—in fact, I don't think that was discussed.

Q. Well, what did you talk about? Anything at all?

A. Yes.

Q. All right. Tell me what was said at the time.

A. He was telling me that it was a good location, that there would be money made there, it was a good place for an investment, a good business location.

Q. You were in business before, weren't you?

A. No.

Q. But you worked for different companies, represented different companies?

A. Yes, that's right.

Q. You were familiar with business procedures,—certainly, with contracts and leases, weren't you?

A. I didn't understand you, sir.

Q. You were familiar with the terms of contracts and leases, and the fact that leases have certain terms and provisions?

[fol. 2103] A. Oh, yes, definitely.

Q. You weren't interested at all in the nature of the tenure in the station?

A. Well, I was interested, yes.

Q. But you didn't ask about it?

A. I don't remember that I did.

Q. Well, what did you expect you were going in there on? On what kind of a term?

A. Well, the term would be favorable both to the lessor and to myself.

Q. But there was no discussion of any term at all?

A. No.

Q. Isn't it true that at that time you were shown this lease, which you subsequently signed (handing document to witness)?

A. I don't think so.

Q. So you just took your station with your eyes closed, and you were not interested in the length of time that you were going to occupy the station?

A. I was told orally.

Q. You were told orally?

A. The length of time that it would be. In other words, as long as I operated the station favorably, why, I could keep it.

Q. As long as you operated favorably, you could keep [fol. 2104] it?

A. Yes, that's right.

Q. So you were told that?

A. Definitely.

Q. In this original discussion didn't Richfield show some interest in your past experience, in your character and personality, and they were interested in leasing it to you, were they not?

A. That I don't know, whether they were or not.

Q. Weren't they interested in your operating the station?

A. I don't think so; not particularly me. This man wanted out of the station, and I think they were happy to get anyone that could purchase the merchandise at the time.

Q. What was the $1300 investment used for?

A. That was mostly merchandise. There was some, a Coca-Cola stand and a battery charger, and such as that, that were included in it.

Q. Isn't it true that one of the matters of controversy during the time of your tenure of that station was that you did not operate it yourself?

A. Yes.

Q. My notes indicate that you own several race horses and were traveling a lot?

A. Not at that time.

[fol. 2105] Q. But yourself were not present in the station to any great extent?

A. I was present every day from 6:00 o'clock until it closed in the evening, 9:30 or 10:00.

Q. You yourself were present there at all times?

A. I believe so, at those times that I told you.

Q. But, I mean, at any time were you not present there during——

A. Yes, I was working in Vancouver all during the day, with the exception of Saturday and Sunday, and at those times I was in the station 12 to 14, and sometimes 16 hours.

Q. So that on Saturday and Sunday you were there, but not the rest of the week?

A. I was there practically all day every Saturday and Sunday, and four or five hours the other days of the week.

Q. But there was objection to the fact that you were not operating it in person, wasn't there?

A. That's right.

Q. When this lease was finally presented to you for signature, did you have any discussion?

A. No.

Mr. DeMartini: That is all. Wait just one moment.

By Mr. DeMartini:

Q. Maybe I don't have this matter clear. Do I understand that you have stated that you did not sign this lease [fol. 2106] until after you went into possession of the station?

A. Yes, that's right. It didn't come up for some time later.

Mr. DeMartini: That is all.

[fol. 2107] Mr. Somerville: May it be stipulated, counsel, that that lease is on the usual form and contains no unusual provisions?

Mr. Paradise: We do not know what the usual form is to which you are referring, Mr. Somerville.

Mr. DeMartini: I will stipulate.

The Court: All right, it is satisfactory.

Mr. Somerville: We would like to put that in evidence. Mark those for identification. One more question, Mr. Hurst.

The Clerk: 15 and 15-A marked for identification.

(The documents referred to were marked Plaintiff's Exhibits 15 and 15-A for identification.)

Redirect examination.

By Mr. Somerville:

Q. At the time this lease was negotiated was there any oral conversation concerning your personal presence at all times at the station?

A. No. They knew at the time that I was working.

Mr. Paradise. Oh, I move to strike concerning anything they knew.

The Court: Read the question.

(Question read.)

A. Yes.

By Mr. Somerville:

Q. You mean there was. What was said? First of all, [fol. 2108] who made that statement, Mr. Lalande or Miller?

A. Both.

Q. And what was said?

A. I told them that I was working. They knew that I was working. I told them that I was working at Vancouver and that I was buying this station for this friend of mine to operate.

Q. Was there anything further said?

A. I beg pardon?

Q. Was there anything further said at that time?

A. No.

Mr. Somerville: That is all. The Government offers into evidence 15 and 15-A.

Recross-examination.

By Mr. DeMartini:

Q. Notwithstanding the fact that you told him that you were buying this station for a friend to operate, you did spend considerable time at the station yourself?

A. That is right.

Q. What gave rise to the dispute over the fact that you were not spending enough time there?

A. I don't know, unless it was the deal—it never came up until the morning that I was called into Bradford's office because I had refused to accept this order of merchandise from Radke. There was never a word said about that from [fol. 2109] the time that I first went into the station until February or March of 1946.

Mr. DeMartini: That is all.
The Clerk: Are these two exhibits admitted, your Honor?
The Court: Yes.
The Clerk: That is 15 and 15-A in evidence.

(The documents referred to were marked Plaintiff's Exhibits 15 and 15-A and received in evidence.)

The Court: Have you finished with this witness?
Mr. DeMartini: I have, your Honor.
Mr. Dixon: Just a moment, Judge.
The Court: All right.

Redirect examination.

By Mr. Somerville:

Q. Mr. Hurst, I call your attention to Government's Exhibit 15 which is the lease of July 20, 1945, and then to Government's Exhibit 15-A which is the lease of March 24, 1946. What was the reason, if you know, for the execution of the subsequent lease?

Mr. Paradise: Well, I object to the question, not primarily on the ground that it is improper redirect, which I think it is, but I think the question, if permitted, should call for conversations.

The Court: Yes.

Mr. Somerville: Yes, I meant to develop that.

[fol. 2110] Q. Did you have any conversations concerning the negotiation of a new lease?

A. Not that I remember about. I don't remember. I will tell you—yes, I can. I can tell you what the deal was, now. It seems to me——

Q. Who were the conversations with?

A. I want to get this date, March of 1946. That must have been—I am not positive. I would say Lelande. It seems to me that the lease that Richfield had with the——

Mr. Paradise: Now, I will object to any volunteered statements of the witness.

By Mr. Somerville:

Q. Yes, just say what was said.

A. Well, they told me that the lease had expired that Richfield had with the actual owner of the station and that I would have to sign a duplicate lease because it was at the end of that period of time, five years or whatever it was that they had, that I had to sign a new lease at that time and that the leases are identical.

Mr. Somerville: Okay. That will be all.

Mr. Paradise: May I see the leases before Mr. Hurst leaves the stand?

The Court: Just a minute.

The Witness: Pardon me.

The Court: There seems to be the foundation for a lot of afterthoughts. You have to stay until they are through. [fol. 2111] The Witness: Yes. Okay, sir.

Mr. Paradise: No further questions.

Mr. Somerville: No further questions.

Mr. Dixon: You are excused, Mr. Hurst. Thank you very much.

Mr. Somerville: The Government asks that the document which is a memorandum addressed to W. T. Dinkins from E. Kirby, dated March 28, 1945, be marked for identification.

The Clerk: So marked.

The Court: All right.

The Clerk: As Government's Exhibit 16.

(The document referred to was marked Plaintiff's Exhibit 16 for identification.)

Mr. Somerville: In connection with Mr. Gates' testimony the Government asks that this be introduced into evidence.

Mr. Paradise: I object to this offer on the ground of immateriality.

The Court: What is it? Then I will have to look at it.

Mr. Somerville: Mr. Gates testified concerning that station by Mr. Harding.

The Court: What is your objection, Mr. Paradise?

Mr. Paradise: Mr. Gates' testimony was concerned en-

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 395

RICHFIELD OIL CORPORATION, APPELLANT,

vs.

THE UNITED STATES OF AMERICA

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

VOL. IV

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[fol. 2114] Los Angeles, California,

Thursday, May 17, 1951, 2:00 P. M.

Mr. Hall: Shall we proceed, your Honor?
The Court: Proceed.
Mr. Hall: Mr. Colmery.

DAVID W. COLMERY, called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination:

The Clerk: What is your name, please?
The Witness: David W. Colmery.
The Clerk: How do you spell your last name?
The Witness: C-o-l-m-e-r-y.

By Mr. Hall:

Q. Mr. Colmery, where do you reside?
A. In Arcadia, California.
Q. Do you operate two service stations in the city of Arcadia?
A. I do.
Q. One of them is located at 50 West Las Tunas Avenue at the corner of Live Oak, in the city of Arcadia?
A. Right.
Q. And the other is at 625 West Las Tunas Avenue on [fol. 2115] the corner of Baldwin,——
A. That's right.
Q. —in the city of Arcadia; is that correct?
A. Yes.
Q. Those stations are operated presently under a lease agreement with the Richfield Oil Corporation?
A. Yes.
Q. With reference, Mr. Colmery, to the first station at 50 West Las Tunas Avenue, on the corner of Live Oak, will you state before you started to operate the station there and entered into the lease whether or not you had any

interest in the property upon which you are presently operating?

A. I did, yes.

Q. And who is the owner of that property?

A. Mr. Kalliwoda, Mr. H. Kalliwoda—K-a-l-l-i-w-o-d-a, I think.

Q. That is correct, sir. Did you have a ground lease arrangement with Mr. Kalliwoda?

A. I did, yes.

Q. Will you state what negotiations you had with Richfield which culminated in the lease arrangement with Richfield, just briefly, so that the court can understand as to what happened?

A. I surrendered my ground lease to Richfield, on the condition that they build a service station which I would [fol. 2116] operate on a firm lease basis.

Q. Now, with reference to the property at 625 West Las Tunas Avenue, who was the owner of that property?

A. Land Escrow and Safe Deposit Company.

Q. Did you have any arrangements with them?

A. I did. I had the ground lease.

Q. Did you make a similar arrangement with Richfield relative to that property?

A. I did.

Mr. Hall: Will you mark these, please?

Mr. Paradise: May I suggest that different exhibit numbers be given to the different locations?

Mr. Hall: Very well.

The Clerk: Government's Exhibits 17 and 17-A, and 18 and 18-A, marked for identification.

(The documents referred to were marked Plaintiff's Exhibits 17, 17-A, 18 and 18-A, for identification.)

By Mr. Hall:

Q. Mr. Colmery, I will hand you Government's Exhibit 17A, and ask you if that is the lease which you received from Richfield Oil Corporation, covering the property at 50 West Las Tunas Avenue.

A. Yes, that is the lease.

Q. I will hand you Government's Exhibit No. 17, for identification, and ask you if that is the 3-C operator sales [fol. 2117] contract, which was executed at the same time as the previous exhibit, Exhibit 17-A?

A. That's right.

Q. I hand you Government's Exhibit 18-A, and I will ask you if that is the 3-C operator's lease you received from Richfield, and which you executed covering the property at 625 West Las Tunas Avenue in Arcadia?

A. That is.

Q. Handing you Government's Exhibit No. 18, I will ask you if that is the 3-C operator's sales contract which was executed and delivered simultaneously with Exhibit 18-A.

A. That is.

Q. Just to refresh your recollection while these are before you, Mr. Colmery, you will note that on Exhibit 17 and 17-A the date of the instruments is the 2nd day of August, 1946, and on 18 and 18-A the date of the instruments is the 11th day of December, 1946; is that correct?

A. That's right.

[fol. 2118] Mr. Hall: If your Honor please, the Government will offer into evidence its Exhibits Nos. 17, 17-A, 18, and 18-A.

Mr. Paradise: No objection.

The Court: They may be received.

The Clerk: Government's Exhibits in evidence.

(The documents referred to were marked Plaintiff's Exhibits 17, 17-A and 18 and 18-A and received in evidence.)

By Mr. Hall:

Q. Are those the leases or agreements under which you are operating the property at the present time, Mr. Colmery?

A. No, they are not.

Q. Have they been supplanted by other leases?

A. They have.

Mr. Hall: May I have the subsequent 3-C leases?

Q. Mr. Colmery, will you tell the Court the circumstances under which the leases now in evidence were supplanted by

different leases? Can you tell us about when you were first approached about that?

A. I was first approached approximately four or five months ago.

Q. Now, would that be November or December of 1950? Would you say that would be about right?

A. I think so.

Q. By whom?

[fol. 2119] A. I believe it was Mr. Bergman from the Pasadena office.

Mr. Paradise: I am sorry. I can't hear you, Mr. Colmery.

A. Mr. Bergman from the Pasadena office.

By Mr. Hall:

Q. What is Mr. Bergman's position, do you know?

A. He is the district manager.

Q. For?

A. For Richfield.

Q. And who else?

A. I believe Mr. Bergman brought them out the first time alone.

Q. Had you ever been communicated with previously about these new leases?

A. No.

Q. Did you know that Richfield wanted new leases executed?

A. No, I didn't.

Q. What did Mr. Bergman say to you?

A. He told me that he had these new leases which eliminated the exclusive contract dealers and that he would appreciate it if I would sign them.

Q. Had your previous lease expired?

A. No.

Q. How long did it have to run yet?

[fol. 2120] A. The one at 50 Las Tunas has about 17 years and the other one about 12.

Q. In reply to that statement what did you tell him?

A. I told him I wasn't interested in signing the leases which he had given me.

Q. And what other conversation between you?

A. There was very little conversation. All Mr. Bergman wanted was a yes or no answer.

Q. Did you make any suggestions to him?

A. Yes. I mentioned the fact that my original leases did not have a termination clause which would allow me to vacate the stations at my will, and that I felt that the length of time was rather long for me to assume the obligations, and I would accept the lease if the termination clause was put in there in my favor.

Q. Was there any agreement on it on that occasion?

A. No.

Q. When was the next time that you discussed these lease privileges with anyone at Richfield?

A. I think Mr. Duncan stopped in to see me a few days after that.

Q. Go ahead. What was the conversation between you and Mr. Duncan?

A. Well, it was very similar. Mr. Duncan told me at that time that he did not think that the company would allow [fol. 2121] for a termination clause, and the conversation was very short. I can't recall what was said.

Q. Did you reach an agreement relative to the lease that day?

A. No.

Q. When was the next time that any discussion was had between you and Richfield relative to the new leases?

A. Oh, it was two or three months later.

Q. And who was the conversation with?

A. Mr. Duncan and Mr. Will.

Q. And what is Mr. Will's position with the company, do you know?

A. I am not positive. He is connected with the legal department.

Q. What was the result of that conversation at that time?

A. The result was that I signed the new leases.

Mr. Hall: Will you mark these leases for identification, please?

The Clerk: Government's Exhibits——

Mr. Paradise: May I suggest that those pertaining to the location at Las Tunas and Live Oak be marked 17-B and 17-C? Would that be convenient?

Mr. Hall: It is all right with me.

Mr. Paradise: And the others as 18-B and -C.

[fol. 2122] Mr. Hall: Yes.

The Clerk: 17-B and 17-C?

Mr. Hall: 17-B and 17-C are the ones that cover the Live Oak address, these three.

(The documents referred to were marked Plaintiff's Exhibits 17-B and 17-C for identification.)

Q. May I ask you, Mr. Colmery, at the time they first approached you in November or December of 1950 did they have the forms of the leases with them?

A. Yes.

Q. And they were all drafted up for you to read and execute if you so desired?

A. That is right.

Q. I will hand you Government's Exhibits 17-B and 17-C and ask you if those are the new 3-C operator's lease and operator's sales contract which you executed as you have just testified?

A. Yes, they are.

Q. Those leases I have just submitted to you cover the premises at 50 West Las Tunas Avenue, is that correct?

A. Yes, that is right.

[fol. 2123] Q. Now, handing you Exhibits 18-B and 18-C, I will ask you if those are the operator's sales contract and operator's lease covering the property at 625 West Las Tunas Avenue, which you stated you signed and which supplanted the previous leases.

A. They are, yes.

Mr. Hall: I will ask that Government's Exhibits 18-B and -C and 17-B and -C be offered in evidence.

Mr. DeMartini: No objection.

The Clerk: Are these admitted, your Honor.

The Court: They may be received.

The Clerk: 17-B and -C, and 18-B and -C in evidence.

(The documents referred to were marked Plaintiff's Exhibits 17-B and 17-C, and 18-B and 18-C, and were received in evidence.)

By Mr. Hall:

Q. Handing you Exhibit 18, which is the previous operator's sales contract, covering 625 West Las Tunas, I will ask you what was the minimum amount of gasoline which was specified in that sales contract?

A. 5,000 gallons, or more.

Mr. Paradise: I object to that as misstating the contents of the written agreement.

The Court: All right.

Mr. Paradise: Isn't that correct? Isn't it correct that the minimum quantity is Mr. Colmery's entire require-
[fol. 2124] ments?

Mr. Hall: Yes, but it says "minimum."

The Court: All right.

By Mr. Hall:

Q. Handing you Government's Exhibit 18-B, may I ask if the minimum requirements stated there for gasoline are 11,500 gallons?

A. That's right.

Q. Was that change made with consultation with you at all?

A. Yes, it was.

Q. Had they inserted that before they submitted it to you, or after?

A. Before.

Q. Before?

A. Yes.

Q. So that when they first submitted this to you in December, these figures were present in there; is that correct?

Mr. Paradise: Now, that assumes a fact not in evidence, and actually is contrary to the evidence. He said these documents were not submitted to him in December. He said these documents were submitted to him in March.

Mr. Hall: Both times. I have covered that, Mr. Paradise. He mentioned that.

The Court: If there is any discrepancy, you can straighten
[fol. 2125] it out.

Mr. Hall: Surely.

By Mr. Hall:

Q. Will you state whether or not those figures were typed in there, the typewritten figures on minimum and maximum gallonage were in that sales contract when the lease was first submitted to you?

A. Yes, they were.

Q. Handing you Plaintiff's Exhibit 17 and 17-B, which are the sales contracts covering the property at 50 West Las Tunas Avenue, you will note that Exhibit 17 specifies 5,000 gallons with the word "minimum" above it?

A. That's right.

Q. And in Exhibit 17-B the minimum gallonage specified there is 14,500?

A. That's right.

Q. May I ask if at the time that was first submitted to you those figures in 17-B were already typewritten in on the instrument?

A. It was, yes.

Q. Mr. Colmery, have you ever had any discussions with any executives, representatives of Richfield, relative to the products which you should handle at either one or both of those stations?

A. Yes.

Q. Can you tell me when?

[fol. 2126] A. Well, at the time the leases were drawn up.

Q. Yes.

A. Are we talking about these new leases now?

Q. No, I covered it first by asking you at any time, so you can start with the first discussions you had.

A. Oh, yes, when I was negotiating for the original leases with Mr. Duncan, we started out with a much higher minimum gallonage, and I told him I thought it was too much, and we argued around a little until we got it down to 5,000 gallons.

Q. Well, was anything said as to the kind of products that you would have to sell in that station?

A. I don't think there was.

Q. Was there at any time while this first lease was in effect, let us say, that any discussion was had with you relative to the products that you should handle?

A. No, I don't think so, other than——

Q. What did you handle in the station up until the 28th of March, 1951? Strike that question.

Are you familiar with Richfield approved products?

A. I am, yes.

Q. Did you handle any gasoline other than Richfield gasoline?

A. No.

Q. Did you handle any motor oils other than Richfield [fol. 2127] motor oils?

A. Yes.

Q. What?

A. Oh, a little Quaker State, and Pennsylvania oil, Pennzoil.

Q. Who was the salesman that called on you relative to the sale of Pennzoil?

A. A party by the name of Ellis.

Q. Do you remember his calling upon your station on occasions since you have been in there?

A. I do.

Q. Do you remember his calling upon you in the latter part of the year, 1949?

A. Yes.

Q. Was there any discussion between you and Harry Ellis relative to the application of the decree in the Standard Oil Company case?

Mr. DeMartini: I object. This line of testimony is leading.

Mr. Hall: I was just going to point it up, and then going to ask him.

Mr. DeMartini: I withdraw the objection.

By Mr. Hall:

Q. What was that conversation?

A. Mr. Ellis told me that I could now, due to the decision in the Standard Oil case, that I was free to handle Pennzoil [fol. 2128] or any other type of oil I wished.

Q. What did you state in reply to that?

A. I told him I didn't think I was.

Q. Did you make any other statement?

A. Yes, I said words to the effect that it was in violation of my lease, and then he insisted that it wasn't in violation of my lease; and I don't think I chose to argue with him at the time, so I made——

Q. Did you make any other statement——

The Court: Just a moment. You interrupted him. You made what?

The Witness: I made a remark to the effect that if the Richfield Oil Company wanted to, there was probably other reasons in my lease so that they could eliminate me from the properties.

By Mr. Hall:

Q. Now, do you recall that Mr. Ellis called at your station sometime the first of this year, within the first two or three months?

A. Not definitely.

Q. Do you have any recollection of any conversation with him in 1951?

A. No, I don't.

Q. In your station there, or, in either one of your stations you stated you had handled these oils. Did you handle any TBA products which are not approved by Richfield? [fol. 2129] A. Yes, I did.

Q. As to tires, what tires do you handle?

A. Well, I handle Goodyear tires. I have sold other kinds.

Q. Do you stock other kinds at all?

A. I have, yes.

Q. Have you any in your station now?

A. Yes.

Q. How many?

A. I have just four, I think. There may be five, one——

Q. Relative to batteries, what brand of batteries do you handle?

A. Goodyear and Nickel Silver.

Q. Do you handle both of those brands in each station?

A. No. No, I handle Goodyear at the station at 50 Las Tunas, and Nickel Silver at the station at 625 Las Tunas.

Q. Is there any reason why you handle the Nickel Silver battery in preference to the Richfield battery?

A. It's a—in price it is a more competitive battery.

Q. Can you give me the difference in price of a comparable battery, as between the Nickel Silver and the Goodyear battery, that is, the price to the customer?

Mr. Paradise: I submit that is immaterial, unless it is first determined that this man has been prevented or there [fol. 2130] has been a suggestion made that he cannot handle it. This is a dealer station not an L-O station.

The Court: I think the difference in price or other reason for handling is material in showing a desire to handle other products, which he may have been thwarted from handling, but to go into detail is not necessary. I think he already stated there was a difference in price, but what it was we are not interested in. I will sustain the objection to the question.

[fol. 2131] Mr. Hall: I will ask you this question, Mr. Colmery.

The Court: Because it is material. We are talking about striking at our competition. It is material to establish that there was competition, that the man not only had a right to but he actually wanted to deal with the outside.

Mr. Hall: Yes, that is true.

The Court: Unless you establish that, those two essential elements are missing because, if a man does not want to deal on his own account, then it does not make any difference. All other reasons become immaterial to the issue here. All right.

By Mr. Hall:

Q. I will ask you this, Mr. Colmery: Have you at any time ever expressed to anyone a dissatisfaction with the adjustment policy of the Goodyear battery people?

Mr. Paradise: Objected to as immaterial.

The Court: Overruled.

A. Yes, I have.

By Mr. Hall:

Q. And can you give us the circumstances why you have made that objection to their adjustment policy?

A. The one case that I have in mind was a cracked battery which the customer was quite perturbed about. So I put a new battery in it. I had no choice if I wanted to hold her business. And I sent the cracked battery in to the Goodyear dealer and a few days later it came back, and my instructions were that the battery—they gave me a little bit of tar and said I could conceal the crack up with the tar [fol. 2132] and a soldering iron. So I got the cracked battery back.

Q. Were you ever able to get an adjustment out of the dealer or the distributor?

A. No, I was not.

Q. Have you had any other difficulties with Goodyear batteries on adjustments?

A. Nothing serious.

Q. Are you satisfied with their adjustment policy generally?

A. No.

Q. Then, may I ask why it is that if you are not satisfied with the Goodyear batteries you continued to carry them exclusively in one of your stores?

A. I carry them exclusively—my two stations are very closely related on that.

Q. They are about five or six blocks apart, aren't they?

A. Just one mile, and it is a good straight road between the two of them, and actually the stock of one battery and the other, I do intermingle them. In other words, if somebody comes in one station and wants a Goodyear battery, I will go down there and bring it back, or vice versa.

Q. Do you carry a similar sized stock of Exide or U. S. Royal batteries in case they want one of those?

A. No.

[fol. 2133] Q. But you do carry a full stock of Goodyear batteries?

A. Yes, sir.

Q. And have you any explanation as to why you carry that full stock of Goodyear batteries?

A. At the time I opened the station I stocked it with Goodyear batteries and there was a trickle charger with Goodyear signs on it, and there has never been too much reason to change.

Q. Has there been actually any material change in the operation of your stations since the 28th of March, 1951, from the way you were operating them previously?

A. No, I don't think so.

Q. Have any Richfield officials since the execution of these new leases told you that you could or could not handle any particular items of tires, batteries or accessories?

A. No.

Mr. Hall: That is all. Just a moment, Mr. Paradise.

Q. At the time that you entered into these new leases what was your actual gallonage at the station at 50 West Las Tunas, your normal average?

A. It has been averaging 18,000 to 20,000.

Q. And at 625 West Las Tunas?

A. Fourteen to fifteen.

Mr. Hall: That is all. You may have the witness, Mr. [fol. 2134] Paradise. Thank you.

The Court: All right.

Cross examination.

By Mr. Paradise:

Q. Mr. Colmery, that matter of the purchase of Goodyear batteries that you were asked about at the tail end of Mr. Hall's examination, I think he asked you whether at any time since March 28, 1951 you had been told by any Richfield official that you were free to handle accessories other than Richfield approved accesories, am I correct? And I take it you answered that you had not been so told since March 28, 1951 that you were free to handle other items than Richfield approved items?

A. They have never been——

Q. Pardon me?

A. They have never been mentioned since that date.

Q. I want to ask you at any time prior to March 28, 1951 had you ever been told by any Richfield employee or representative that you could not handle non-approved Richfield merchandise, and when I speak of "merchandise" I am talking about tires, batteries or accessories.

A. No.

Q. You were never so told, were you?

A. No.

Q. From whom did you buy the bulk of your tires, batteries and acessories?

[fol. 2135] A. Mr. Charlie Cole.

Q. Who is Mr. Charlie Cole?

A. He is the TBA distributor of Richfield.

Q. Richfield's TBA distributor?

A. That is right.

Q. What reason do you have for buying those things from Mr. Cole?

A. Mr. Cole is—the TBA distributor stocked my station at the start, then he comes around every week. It is continual, and he carries my account, and Charlie is a pretty nice fellow. So most of the merchandise, I can't buy it any cheaper anywhere else. There is some items I can. The ones that I can, I do.

Q. Do you get as good service from him as from the others?

A. Yes.

Q. Has either he or any employee or representative of Richfield Oil Corporation ever told you that it was necessary or expected of you to buy all or any of your tires, batteries or accessories from Mr. Cole.

A. No.

Q. Now going back to the time when these stations were first built, I understood you to say that you had a lease on the property at 50 West Las Tunas. Is that the one on the corner of Las Tunas and Live Oak?

[fol. 2136] A. Yes.

Q. Who is the owner of that property?

A. Mr. Kalliwoda.

Q. Kalliwoda. Since these are both on the same street, maybe it would be simpler for me to identify them by that name. That is the Kalliwoda property we will call it.

A. That is right.

The Court: Did you say he owned both lots?

The Witness: No, no. He owns the one and the Land Escrow & Safe Deposit Co. owns the other.

By Mr. Paradise:

Q. What is the name of the company that owns the other?

A. Land Escrow & Safe Deposit Co.

Q. You had written leases from both of those companies?

A. That is right.

Q. I mean from both of those owners?

A. That is right.

Q. Running from them, respectively, to you as lessee in each instance?

A. That is right.

Q. At the time you had those leases were either of those properties improved with service stations?

A. No.

Q. In what condition was the land at the time you held those leases?

A. Vacant.

[fol. 2137] Q. Both parcels were vacant?

A. That is right.

Q. Did you have any discussions concerning either of those properties with any representative of the Richfield Oil Corporation?

A. I did.

Q. Did you also have discussions with other oil companies concerning them?

A. Yes.

Q. With what representative of Richfield Oil Corporation did you discuss those properties?

A. I believe my original discussions were with Mr. Shaffer, who was then branch manager of the Pasadena office for Richfield.

Q. Did you also have discussion with Mr. Duncan concerning them?

A. I did.

Q. To sum the matter up, is it not correct that as a result of discussions between you and Mr. Shaffer and Mr. Duncan you made an arrangement with the Richfield Oil Corporation by which you agreed to surrender your leases to the property owners and cancel your leases if Richfield would take direct leases from each of those property owners di-

rectly, and at the same time enter into long-time subleases directly to you on each location?
[fol. 2138] A. I did.

Q. Is that correct?

A. That is right.

Q. Let us take the Kalliwoda property first, Mr. Colmery.

May I ask that this lease dated August 2, 1946, between Herbert Kalliwoda and wife, as lessor, and Richfield Oil Corporation, as lessee, be marked as defendant's exhibit——

Mr. Dixon: Counsel, the Government will agree, so that the record will be straight on it, that that exhibit may be made a part of the Government's exhibits in connection with that property.

Mr. Paradise: Fine.

Mr. Dixon: That will be 18.

The Clerk: -D.

Mr. Hall: Then it is 17 or 18, the next letter.

Mr. Paradise: It will be 17, I think. Does the 17 refer to the Kalliwoda property?

Mr. Hall: Yes, I am sure it does.

The Clerk: 17-D marked for identification.

Mr. Paradise: I will offer it into evidence if the Government has no objection.

Mr. Dixon: No objection.

The Clerk: Is this admitted, your Honor?

The Court: It may be received.
[fol. 2139] The Clerk: 17-D in evidence.

(The document referred to was marked Plaintiff's Exhibit 17-D and received in evidence.)

By Mr. Paradise:

Q. It was the understanding, was it not, Mr. Colmery, that when Richfield leased this property from Mr. and Mrs. Kalliwoda, and you at the same time surrendered your lease to Mr. and Mrs. Kalliwoda and took the sublease directly from Richfield, that Richfield agreed to build a service station on this property?

A. That is right.

Q. Do you know whether Richfield did build a service station on the property?

A. Yes, they did.

Q. Do you have any knowledge as to the cost of that service station?

A. At the time I contacted a contractor about it to find out, and a double-wing service station, so to speak, ran between—oh, twenty to twenty-five thousand dollars, I believe.

Q. At the time, as a part of the same transaction, Richfield subleased to you the property under Government's Exhibit 17-A by an instrument dated the same date as the ground lease, that is to say, on August 2, 1946, that is correct?

A. Yes.

Q. And that that sublease was for the full 20-year term [fol. 2140] of the ground lease, less one day, is that not correct?

A. That is right.

Q. Do you know whether or not that sublease permitted you or Richfield to terminate that sublease at any time prior to the 20-year period? I mean an arbitrary right of termination?

A. There was no way I could terminate. There were various means, I think, that Richfield could terminate.

Q. Well, I think the agreement on that score will speak for itself. But, so far as you know, you had no right to terminate it, is that correct?

A. That is right.

[fol. 2141] Q. Right. Is it not correct that any right that Richfield had to terminate the agreement was based on some default by you in the payment of the rent, or some other provision?

A. Yes.

Mr. Dixon: Will counsel stipulate it is all tied into the sales contract, that is, that Richfield had the right to cancel the sublease to this witness in the event the sales contract was canceled by Richfield?

Mr. Paradise: I will be glad to compare the agreement

during the recess, Mr. Dixon, and if that is true, I will read it into the record.

By Mr. Dixon:

Q. Now, this sales contract, which is Government's Exhibit 17, on this 3-C transaction, was entered into as a part of the same transaction, was it not? I mean, it was entered into at the same time?

A. Yes, the sales contract and the lease.

Q. Yes. What discussion did you have concerning the agreement contained in paragraph 1 of this sales contract, under which you agreed to buy your entire requirements of certain described automotive petroleum products, and which agreement also contains the provision that as to gasoline, you agreed to buy the minimum of 5,000 gallons, as to lubricating oils a minimum of 50 gallons, and as to greases a minimum of 50 pounds?

[fol. 2142] A. You want to know what discussion I had pertaining to that?

Mr. Dixon: That is per month, counsel?

Mr. Paradise: Per month, yes.

By Mr. Paradise:

Q. Yes, the discussions pertaining to the petroleum products that you would buy from Richfield under that contract, and I am talking about discussions that occurred in connection with the negotiation of this transaction back just prior to August 2nd, of 1946.

A. I have already stated that my discussion was as to the amount of minimum requirements, and originally the minimum requirements were higher, and after my discussion with Mr. Duncan, why, they were lowered to these figures.

Q. That was a new location, and you didn't know what experience you were going to have insofar as monthly gallonage was concerned; is that correct?

A. That's right.

Q. Is it not also a fact that Mr. Duncan at this time made it clear in his conversation with you that Richfield was not interested in taking a lease from Mr. and Mrs. Kalliwoda

for a 20-year period, and then subleasing it to you for a 20-year period, and also agreeing to build a service station on this property, unless you, as a part of the transaction, agreed to buy your entire requirements of gasoline and lubricating oil from Richfield?

[fol. 2143] A. That was understood, yes, sir.

Q. Was that not also discussed at that time?

A. I can't recollect that it was at that time. I know it was discussed and understood.

Q. Well, you understood that the reference in that sales contract, dated August 2, 1946, to a minimum of 5,000 gallons, that in that respect the minimum meant that you agreed to purchase that quantity but that, nevertheless, if your requirements were greater than that, that you would buy all of your gasoline and lubricating oil from Richfield, did you not?

A. That's right, yes.

Q. And you understood that at the time you made the contract?

A. I did.

Q. All right. Now, let's come to the parcel known as the Land Escrow Company's parcel.

Mr. Paradise: By suggestion of Mr. Dixon, this will be marked Government's Exhibit 18-D.

Mr. Dixon: Yes, if that is the next in order.

Mr. Paradise: I will identify it as the ground lease, dated December 11, 1946, between Land Escrow and Safe Deposit Corporation, as lessor, and Richfield Oil Corporation, as lessee.

The Clerk: Government's Exhibit 18-D, marked for iden-

[fol. 2144] tification.

Mr. Paradise: It is offered in evidence.

The Clerk: Is this admitted, your Honor?

The Court: It may be admitted.

The Clerk: 18-D in evidence.

(The document referred to, marked Plaintiff's Exhibit 18-D, was received in evidence.)

By Mr. Paradise:

Q. Now, in connection with the discussions concerning this parcel of land, Mr. Colmery, were not the discussions approximately the same as those which you have just described concerning the Kalliwoda parcel?

A. They were, yes.

Q. Did you not also, in connection with this parcel of property, request that Richfield take a lease directly from the Land Escrow Company, build a service station on the property, and sublease the property to you for a period of 15 years, and that if Richfield would so do you would surrender your written lease to the Land Escrow Company and cancel that lease?

A. Well, that is a summary of the transaction. I don't like the first word "request" that was used. I don't think I requested it.

Q. Put it in your own words, then. I didn't mean to suggest any answer. I am just trying to get at the facts as [fol. 2145] simply as possible.

A. Yes, the suggestions of handling it in this manner were made by the Richfield representatives. That I am sure of.

Q. Is it not true that you also said to the Richfield representative that you would not surrender your lease to the Land Escrow Company until you received back a firm sublease for the full 15-year period?

A. I did, yes.

Q. And also an insistence that Richfield, at its own cost, construct a service station on that property?

A. That's right.

Q. Do you know what the cost of that station was?

A. I think around 15,000.

The Court: I didn't hear that.

The Witness: Around $15,000. It is a single wing station.

By Mr. Paradise:

Q. That is a less expensive type of construction than the one on the Kalliwoda property?

A. That's right, yes.

Q. Now, in connection with that transaction then, this 3-C lease by Richfield to you, and the 3-C sales contract be-

tween you and Richfield, both dated December 11, 1946, were entered into as a part of that transaction; is that correct?

[fol. 2146] A. They were, yes.

Q. What conversations did you have with respect to the provisions of paragraph 1 of the sales contract, which is Government's Exhibit 18, at the time of the execution of this agreement? That is the provision concerning your obligation to buy your entire requirements of petroleum products from Richfield.

A. Regardless of the dates on these, the conversations pertaining to both of them were simultaneous.

Q. Oh, I see. The paper work on the second transaction was later?

A. That's right.

Q. What was the cause of the delay as to the Land Escrow parcel, do you know?

A. I don't recall. I really don't, but I do recall that I wanted the same type of station on each corner, and the leases were—I think I wrote a letter to the effect that the first lease wasn't acceptable until the other one was negotiated at the same time.

Q. I see. So the leases and sales contracts on both parcels were all a part of one transaction?

A. That's right.

Q. I see. Similarly, is it also true that with respect to the sales contract covering the Land Escrow parcel, that there again you asked to have the minimum quantity put [fol. 2147] at a low figure because you didn't know what that station would do after it was constructed at some future time?

A. That's right.

Q. Now, subsequent to the opening of the station on the Kalliwoda property, what gallonage did that station produce?

A. I can't answer that one.

Q. You don't recall?

A. You said subsequent to the opening? Repeat the question, please.

Q. After the station was built and you started operating the station, and it got well under way,——

A. Yes.

Q. —what gallonage of gasoline did it start producing?

A. If I recall, it started out around twelve or thirteen thousand, and within, oh, two or three months, it was up to fifteen, sixteen. The station has just gradually grown over a period of three years.

Q. What was your experience with respect to the station on the Land Escrow parcel?

A. The first month we opened, it was the best month I ever had. It did about a little better than 15,000 gallons, I believe. The next month we opened the other station, so half the business went down there, and this one fell off. [fol. 2148] So since then that has been gradually growing up.

Q. Now, calling your attention to the conversation that you mentioned with Mr. Bergman and Mr. Duncan, at which time they suggested a modification of the sales contract and sublease to you, will you first tell me as closely as you can recall when that occurred?

A. Which? I will have to ask a repeat on that.

Q. Mr. Hall asked you who it was who first presented an amendment to you of your sales contract and sublease sometime last fall, and I understood you to say it was a Mr. Bergman.

A. Yes.

Q. Was anyone else with him?

A. I don't think so.

Q. I heard you also mention Mr. Duncan. Did he come out on a separate occasion?

A. Yes.

Q. When did you have your discussion with Mr. Bergman, as nearly as you can fix it?

A. It's very difficult. I can just state it was towards the end of 1950. I can't——

Q. I see. Sometime before Christmas?

A. I think it was.

Q. Now, at the time Mr. Bergman came out, did I understand you to say that he presented to you at that time these [fol. 2149] same instruments,—the same sales contracts which are Government's Exhibits 17-B and 18-B? (Handing documents to witness.)

A. You mean exactly the same or——

Q. Yes, I gathered from Mr. Hall's statement to me, in response to one of my objections, that I had misunderstood your answer.

A. Well, there is no way I can determine the exact—the general appearance of the contract is the same as the one that Mr. Bergman had.

Q. You mean it was on a pink form?

A. That's right. And I do know that Mr. Bergman pointed out to me that the exclusive contract clause had been eliminated, and I refused to sign it, so he took the papers with him.

Q. I see.

A. Now, I'll take that back. He left those papers with me for a day or two and came back later, in two or three days, and picked them up.

Q. What else did Mr. Bergman say at that time concerning the exclusive requirements clause?

A. I don't think Mr. Bergman said anything in regard to that other than it was eliminated.

Q. Did he tell you why it was eliminated?

A. I don't believe so.

[fol. 2150] Q. Did he point out to you that there was a quantity provision in here?

A. Yes, I think so. We discussed that.

Q. When Mr. Bergman came out, did he not bring out with him new sales contracts on both of the stations, both the Kalliwoda station and the Land Escrow station?

A. Yes, he had the two papers.

Q. And two new subleases?

A. That's right.

Q. In declining to sign those, did you not inform Mr. Bergman that your reason for not doing so was that you wanted to amend the basic lease in order that you might have a right to terminate your leasehold from Richfield at any time on 30 days' notice?

A. I did.

Q. And what did Mr. Bergman tell you in response to that?

A. He said—he told me that the only thing he could do

was send them back in to the home office with that report, and see what they said.

Q. Now, when did you next hear from the Richfield organization, or any Richfield employee?

A. Well, Mr. Duncan stopped in one day. It was within probably a week or two, or maybe three weeks of when I first talked to Mr. Bergman.

[fol. 2151] Q. He came to your service station?

A. That's right.

Q. And what was his discussion?

A. He had the leases with him, and he wanted me to sign them. However, there was no change in them and I refused.

Q. You mean no change with respect to the termination?

A. That's right. I also told him at that time that I wanted the minimum gallonage set back.

Q. Pardon me?

A. I also at that time told him I would like to have the minimum gallonage reduced.

Q. Do you remember the minimum gallonage that was specified in the contracts at the time Mr. Duncan came out?

A. I believe it was the same as it is in those now. If it wasn't, it was very close to it.

Q. I see. Do you recall the figures that are in here?

A. Fourteen five and eleven five, isn't it?

Q. That is correct, yes.

Those were the same figures that Mr. Duncan presented to you?

A. I think so.

Q. Now, at the time Mr. Duncan came out there, do you recall what your gallonage was at those respective stations, [fol. 2152] on an average basis?

A. About the same as it is now, the same figures I gave you. It is eighteen to twenty thousand and thirteen to fifteen thousand.

Q. The larger one relates to the Kalliwoda station?

A. That's right.

Q. Now, you had a discussion then, a further discussion with, I think you mentioned Mr. Duncan and Mr. Will, in connection with these instruments dated March 28, 1951,—

A. That's right.

Q. —which are Government's Exhibits 17-B and 17-C and 18-B and 18-C, and will you state what conversations occurred with respect to the quantities of gasoline referred to in these respective contracts between you and Mr. Duncan and Mr. Will?

A. Mr. Duncan and Mr. Will assured me of the fact that the minimum requirements, as they were written there, were not too important, and the clause below has various means of reducing that quantity, in case business is bad, or gasoline is rationed, or acts of God, or very low supply, and in case my gallonage should drop down, why, my minimum gallonage would be reduced.

Q. Now, did Mr. Will explain to you, either Mr. Will or Mr. Duncan explain to you how the quota of 11,500 gallons had been computed on the sales contract which relates to the Land Escrow property?

[fol. 2153] A. Yes.

Q. What was said?

A. I believe the figures were 75 per cent—it was a computation of 75 per cent of my previous year's average.

Q. Who said that?

A. I think it was Mr. Will.

Q. Did Mr. Will make any statement to you concerning what your obligation was under this contract?

A. My obligation? Yes.

Q. What did he say?

A. My obligations were to purchase the petroleum products in the quantities listed there, with the restrictions that they are based on in the clause below there.

Q. Is it not correct that Mr. Will stated to you, and I am now referring to Government's Exhibit 18-B, where it is 11,500 gallons, and that is the one that relates to the Land Escrow property—is it not correct that Mr. Will stated to you and explained to you that your only obligation under this contract was to purchase 11,500 gallons, and did he not also explain to you that where it says "20,000 gallons," that you had the right to buy any excess gasoline that you wanted up to that quantity?

A. Yes, I had a right to buy in excess. However, on the

minimum, my understanding is that if I fail to buy that [fol. 2154] minimum, I am still not in violation of the lease.

Q. I see.

A. That was my understanding.

Q. Was there any discussion between you and Mr. Will of this clause that shows the figures, and I will read it to you:

> "The above quantities represent those to be purchased and sold under normal business conditions, and in the event, because of climatic or other conditions, buyer's sales are abnormally less during certain months of the year, the aforesaid quantities will be proportionately reduced for said months, based upon previous business experience of buyer's station or of business generally in the vicinity, in the event buyer's station has had no previous business experience."

Was there a discussion concerning that clause?

A. Yes.

Q. What was the discussion?

A. Mr. Will explained to me that that would cover, in case my business fell off or anything happened that I could not get the gasoline to sell, that clause would cover—would excuse me from the purchase of the minimum requirements, or words to that effect.

[fol. 2155] Q. Was it not also discussed, and did you not also understand, Mr. Colmery, that at that station if you had need for in excess of 11,500 gallons in any month, that you were free to purchase from anyone other than Richfield,—the excess quantity?

A. I don't think that was mentioned.

[fol. 2156] Q. I did not hear you.

A. I say, I don't think that was mentioned, any excess quantities, other than that I was free to buy it from Richfield.

The Court: Was any other competitive concern mentioned as a source at all in regard to gasoline, to buy gasoline, somebody else's gasoline and put it in your tanks at any time?

The Witness: I don't believe that was discussed at all.

By Mr. Paradise:

Q. At least, you do not recall any discussion, is that it?

A. About me putting competitors's gasoline in the station?

Q. No, not about you putting it in, but you having the right to buy from whomever you saw fit any quantity that you needed over and above this excess of 11,500 gallons, that you had the right to do it? That does not compel you to buy it from anyone, but the right to buy it.

A. I don't think that was discussed.

Q. You recall no discussion.

The Court: All right.

By Mr. Paradise:

Q. Mr. Colmery, I see on this lease contract that covers the Land Escrow property that the figures in connection with lubricating oil have been stricken out, the typewritten figures have been stricken out, and changed from 115 [fol. 2157] gallons and the number "65 gallons" is written in in ink.

A. That is right.

Q. And I also see that on the same contract the typewritten figures "115 pounds of grease" has been stricken out in ink and the figure of "50 pounds" has been inserted in ink.

A. That is right.

Q. And that both of those numbers have been initialed.

A. That is right.

Q. What brought that about? What occasioned that change?

A. I explained to Mr. Will that my station does not hold up to the average on grease and oils. In other words, the amount of grease and oil is determined by the amount of gallons sold. And I felt that that quota was a little higher than I could make and so he changed them.

Q. The figures that were inserted were the figures that you requested?

A. The figures was written in.

Q. In ink, yes.

A. Are the ones that I requested?

Q. Yes.

A. Yes. We just about cut them in two, if I remember right.

Q. Did Mr. Will explain how the figures of 115 gallons [fol. 2158] and 115 pounds had been arrived at?

A. Yes. I think it was one per cent of the gallonage. Is that right?

Q. I don't know. It is whatever he told you.

A. He told me. I don't remember if it is one per cent. I think that is one per cent, yes.

Q. With respect to the sales contract covering your other station, the Kalliwoda station, which is also dated the same date, March 28, 1951, was that sales contract also discussed at the same time between you and Mr. Will and Mr. Duncan?

A. Yes, they were discussed simultaneously.

Q. What was the discussion with respect to the 14,500 gallon minimum that is contained in the sales contract which is Government's Exhibit 17-B?

A. The discussion was simultaneous with the other station. I mean the two of them were given to me and we talked about the two leases as if they were one.

Q. I see. Then, to shorten this, was it also discussed between you, Mr. Duncan, and Mr. Will that that quantity had been fixed at approximately 75 per cent of the average of your previous gallonage at that station?

A. It was.

Q. And that that was your obligation under this contract, subject to the following clause concerning reduction for climatic conditions?

[fol. 2159] A. That is right.

Q. And that you had the right to buy an additional quantity up to the stated maximum of 25,000 gallons?

A. That is right.

Q. I notice that the typewritten figures concerning lubricating oils and greases have also been stricken out in ink and changed in ink and initialed on that contract, also.

A. That is right.

Q. Was that for the same reason as you have already testified to?

A. Yes.

Mr. Paradise: At the suggestion of the Government I am going to ask that these be marked. They are two mimeographed forms, each entitled "service station gallonage, D. W. Colmery," and with different addresses, the one relating to Las Tunas and Live Oak. That is 17. I think that is the Exhibit 17 group, is that correct?

The Clerk: It will be 17-E marked for identification.

(The document referred to was marked Plaintiff's Exhibit 17 for identification.)

Mr. Paradise: I offer it.

The Court: It may be received.

The Clerk: 17-E in evidence. Government's 18-E marked for identification.

(The document referred to was marked Plaintiff's Exhibit 18 for identification.)

[fol. 2160] Mr. Paradise: That pertains to——

Mr. Dixon: I would suggest, counsel, that before they are received in evidence that this witness be asked to verify the gallonage.

Mr. Paradise: Oh, yes. I haven't offered them in evidence yet.

The Clerk. 17-E is in.

The Court: All right.

By Mr. Paradise:

Q. 18-E bears the title "D. W. Colmery, Las Tunas and Baldwin," and that is the Land Escrow property, is that correct?

A. Come again. Let me see it.

Q. I just want to make sure that we have the right numbers on this. It is Exhibit 18-E, the figures on this pertain to the Land Escrow parcel?

A. Yes.

Q. And the Exhibit 17-E, do these figures pertain to the Kalliwoda parcel?

A. Yes. Now, let me modify this. These are your figures. I have never seen them before.

Q. I agree with you. That was going to be my next question, Mr. Colmery. I was going to ask you to examine

these figures and ask you whether, as nearly as possible, you can recall whether or not those figures correctly express and state the gallonage at those respective stations during the months therein named, that is to say, from [fol. 2161] February of 1950 through March of 1951?

A. Yes.

Mr. Hall: Just one moment. May I ask, your Honor, that Mr. Paradise explain the figure of the gallonage as to whether or not he is referring to the amounts that are delivered by Richfield or the amounts that are sold by Mr. Colmery, so Mr. Colmery's answer will be correct in either event?

Mr. Paradise: It is my understanding that those figures represent gallonage delivered by Richfield to those stations during those months.

Mr. Hall: As long as Mr. Colmery understands it, it is okay.

The Witness: They look approximately right, yes.

Mr. Paradise: May I offer these in evidence?

The Court: They may be received.

The Clerk: Government's 17-E and 18-E in evidence.

(The documents referred to were marked Plaintiff's Exhibits 17-E and 18-E and received in evidence.)

The Court: Anything further?

Mr. Paradise: Yes, I have two documents. This will be quite short, your Honor.

The Court: That is all right. You were silent there and I did not know.

Mr. Paradise: I was searching for something in the agreement.

[fol. 2162] The Court: That is all right.

By Mr. Paradise:

Q. Mr. Colmery, in these instruments that you signed in March, the instruments of the new sales contract and the new sublease on each station, did the subleases contain, as you had required, a provision permitting you to terminate your sublease on each station?

A. They did, yes.

Q. Is it correct that paragraph 18 of Government's Exhibit 18-C expresses what your wish was in that regard as a condition to signing the amendment to the sales contract, and I will read it to you:

> "Lessee shall be privileged to terminate this lease at any time during the term hereof by means of a prior 30-day notice in writing to lessor"?

A. That is right.

Q. And does the sublease covering the Kalliwoda property contain the same clause in paragraph 19?

A. It does, yes, sir.

Q. Now I will call your attention, Mr. Colmery, to a provisions in your original sublease on each of these two properties, and I am reading the last sentence of paragraph 3 of the printed clause, and it says this:

"Lessee"——

which refer to you as lessee in this case——

> "Lessee shall make no change, alteration or sub-
> [fol. 2163] stitution in the demised premises, improvements, buildings, fixtures and equipment except such as may be necessary to enable lessee to continue business on said premises, unless the consent in writing of the lessor be first obtained."

You were familiar with that provision of these leases?

A. Yes.

Q. On both of those parcels of property?

A. Yes.

Q. Both the Kalliwoda and the other?

A. Yes.

Q. At the time the new subleases were brought out to you and which new subleases on both parcels contained the right of termination which you had requested, was there called to your attention the fact that paragraph 3 of both of the new subleases had had that clause eliminated?

A. Yes.

Q. Was that matter discussed between you and Mr. Duncan and Mr. Will?

A. No.

Q. It was merely called to your attention?

A. Yes.

Mr. Paradise: That is all. Oh, just one moment. That is all.

The Court: All right, any redirect?

[fol. 2164] Mr. Hall: Just one matter I want to clear up that was brought out.

The Court: All right.

Mr. Hall: I will not permit myself but two questions, your Honor.

The Court: Well, all right.

Redirect examination.

By Mr. Hall:

Q. Mr. Colmery, this explanation that I believe you testified Mr. Will made to you as to this second or last paragraph of paragraph 1 of the sales contract which he stated relieved you in case the gallonage went down, you would not have to live up to the minimum, do you recall that statement, that clause?

A. Yes. Yes, I understood.

Q. Did he explain to you what the company position was as to what would be understood to be normal business conditions if your gallonage fell below the minimum?

A. Yes. It was based on conditions of other service stations, more or less on an average.

Q. Did he explain to you how much ground was covered by this climatic conditions or other conditions, what they meant?

A. No, not in too much detail.

Q. Can you give us his language that he explained this to you as to how you would be relieved from the minimum [fol. 2165] requirements of the contract?

A. Well, Mr. Will explained that there was just absolutely nothing to worry about there, that in the case gallonage fell off for any reason, it was covered in this clause.

Q. Did you ask him, if that was the case, why they specified a minimum gallonage?

A. Yes.

Mr. Paradise: That, I submit, is argumentative.

The Court: Yes.

Mr. Hall: No. I wanted what Mr. Will's answer was.

The Court: Well, he is not a lawyer. I will sustain the objection. Anything further?

Mr. Hall: That is all, your Honor, from this witness.

Mr. Paradise: Nothing further.

The Court: All right. Step down. A short recess.

(Short recess.)

[fol. 2166] The Court: All right, gentlemen, call your next witness.

Mr. Somerville: Mr. Gordon McRae.

Gordon McRae, called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

The Clerk: What is your name, please?

The Witness: Gordon McRae.

The Clerk: How do you spell your last name?

The Witness: M-c-R-a-e.

By Mr. Somerville:

Q. What is your name, sir?

A. Gordon McRae.

Q. Where do you reside?

A. In Redondo Beach.

Q. Mr. McRae, have you ever operated a service station handling Richfield gasoline at 3016 Main Street in Ocean Park?

A. Yes, sir.

Q. Ocean Park, California?

A. Yes, sir.

Q. Can you tell me approximately when you first started [fol. 2167] operating the station?

A. About 1939 through 1946. In about '46 I turned it over to my partner, Raymond Bennett.

Q. Did you enter into a lease with Richfield concerning that property?

A. Yes, sir, in about 1939.

Q. Whom did you see about taking over that station?

A. I talked with Mr. Cook, a merchandiser of Richfield, and Mr. Vaughn, branch manager.

Mr. Somerville: May it be stipulated, counsel,——

Mr. DeMartini: It may be stipulated it was an L-O station. That is correct, is — not, Mr. McRae?

The Witness: Pardon? Was it a leased out?

Mr. DeMartini: Yes, the original lease on that station?

The Witness: Richfield held the master lease on it until, I would say, '42, approximately.

By Mr. Somerville:

Q. Mr. McRae, who did you say checked you into that station and turned the premises over to you?

A. Mr. Cook and Mr. Vaughn.

Q. Was anything said at that time concerning the products that you should handle?

A. Yes, Mr. Cook said I should handle Richfield products when I took the station over.

Q. Was anything said as to TBA products?

[fol. 2168] A. I had to handle the Richfield approved accessories. That was definitely understood.

Q. Now, subsequently was there a change in the ownership of the underlying lease, that is, did you acquire the underlying lease at a subsequent date?

A. Yes, I obtained the master lease from the property owner, Mr. Polkinghorn.

Q. That is——

A. That is John Polkinghorn.

Q. About when was that?

A. It was in '42 or '43, as close as I can remember.

Q. I show you, Mr. McRae, a sales contract dated December 2, 1941, between Richfield Oil Corporation, as seller, and Gordon McRae, as buyer, and a painting agreement of the same date; the sales contract on Form 337, print date

6-40, and the painting agreement Form 59, print date 4-41, and ask you if those are the agreements that you entered into at that time.

A. Yes, sir, they are.

Mr. Somerville: The government asks that these be marked for identification.

The Clerk: Government's Exhibits 19 and 19-A, marked for identification.

(The documents referred to were marked Plaintiff's Exhibits 19, and 19-A, for identification.)

[fol. 2169] By Mr. Somerville:

Q. Now, Mr. McRae, at the time that you entered into these agreements, were there any conversations concerning the paint, or the margins, or the operation of the station under the agreement with any Richfield representative?

A. Well, at the time that I signed the paint agreement, why, Mr. Cook at that time told me that if I handled the Richfield products, the tires, tubes, and accessories, their approved products, that they would arrange to paint our station, and they would also give us what we called a kickback, where we received a check of so much a gallon, that would help us pay our rent to the property owner.

Q. Was anything said with respect to whether you could handle other products?

Mr. Paradise: May we have the foundation laid as to time?

The Court: They are talking about the time of the agreements, I suppose.

By Mr. Somerville:

Q. Are you talking now about the time of the agreements?

A. Yes, I am talking about the agreements I made with Richfield at the time I received the property lease from the property owner.

Q. Was it at or about that time?

A. Yes, sir, just within a period of two weeks or so.

[fol. 2170] Who were the parties you talked to?

A. I talked to Mr. Cook and Mr. Martin, who was a branch manager at Santa Monica at that time.

Q. Where did the conversations occur?

A. In the station, at 3016 Main Street.

Q. Were there any other persons present?

A. Mr. Vaughn was there, Benny Vaughn, branch manager of Hollywood, or the manager. He was the district manager, I believe, at that time.

Q. Was there anything said concerning whether you could handle competitive products?

A. They told us we were to use 100 per cent Richfield approved products.

Q. Now, at any time subsequent to this, or at the same time, did you have any conversations concerning putting in a competitive gasoline?

A. Well, within a period, I would say, of 30 days from the time I signed the lease with Richfield, at that time the Standard station across the street was going out of business, so I wanted to handle two types of gasoline, and at that time they told me I could not, that the company had more or less an agreement that they wouldn't——

Q. May I ask who the parties were who made these conversations?

A. Mr. Cook and Mr. Martin. Cook was the merchandiser. Mr. Martin was the branch manager at Santa Monica.

[fol. 2171] Q. Where did these conversations take place?

A. At the service station in Ocean Park.

Q. What was the conversation. What did you say and what did they say?

A. Well, I told them that I wanted to handle two types of gasoline, Standard and Richfield. And Mr. Martin at that time said that the company had an agreement, sort of a gentleman's agreement——

Mr. DeMartini: I move to strike this, your Honor, as to the company having an agreement.

The Witness: I am just saying what Mr. Martin said.

Mr. Somerville: That is just part of the conversation.

The Court: He is saying what he was told. Go ahead.

A. Mr. Martin told me that the companies had a gentleman's agreement that they did not handle what they called split pumps, which is two different types like Standard Oil and Richfield in one station. So they said I would have to either handle Richfield or Standard.

By Mr. Somerville:

Q. What did you do?

A. I naturally stayed with Richfield.

Q. Did you own the pumps or property there?

A. No, sir. The property owner owned everything on the station from the screwdriver right up to the pump. It was one of their first stations. It was one of the few that the property owner equipped with everything.

[fol. 2172] Q. Did you at any time handle any competitive gasoline at that station?

A. No, sir. I have handled Richfield ever since.

Q. Did you handle competitive lubricating oils?

A. No, sir. It was 100 per cent Richfield products.

Q. Now, I call your attention to a service station at 1001 Gayley Avenue in West Los Angeles. Are you familiar with that station?

A. Yes, sir. I leased the station.

Mr. Somerville: May it be stipulated, counsel, that there was a Form 542, print date 9-41, dated January 9, 1942, between Richfield and Gordon McRae?

Mr. Paradise: So stipulated.

Mr. Somerville: May it be further stipulated that there was a subsequent Form 542 lease, print date 4-42, dated May 20, 1943?

Mr. Paradise: Covering the same location?

Mr. Somerville: Covering the same location, yes, sir.

Mr. Paradise: So stipulated, also with Mr. McRae.

By Mr. Somerville:

Q. Did you contact somebody from Richfield Oil Corporation with respect to entering into this lease, the first lease?

A. With the 1001 Gayley?

Q. Yes, sir.

A. Well, I told them that I had always wanted to expand, [fol. 2173] and so at the time that the station came up for lease, why, Mr. Martin contacted me and asked me if I would like to have the station.

Q. Do you happen to know who the previous operator of the station was?

A. Well, the operator about, I would say, two weeks prior to the time that I took the station over was—if I remember, his first name was Bob. It was Bob's Service Station. And he had trouble with the company so he just took all of his accessories, tires and batteries and put them in his truck and just went out of business.

Q. Did he talk to you about it? Did you have any conversation with him?

A. No. I am just telling what I was told.

The Court: Did you see it happen?

The Witness: Pardon me, sir?

The Court: Did you see it happen?

The Witness: No. He told me. He told me what happened. I saw the results. I went down to the service station and the service station was completely stripped of everything that belonged to Bob, and that is the reason they contacted me to take over the station. They knew I had extra equipment, I had hoses and gauges and pumps and grease equipment and everything.

By Mr. Somerville:

Q. Was that station operated during the time that that operator left until you went in?

[fol. 2174] A. From the time the operator left until the time at which I took over, which was a period of, as close as I can figure, was two weeks, it was company operated. The reason I said that it was company operated, because at the time that I took the station over we had lost about half of our customers. And the reason was, Bob had a big sign up for 59 cents for washing and when Richfield took it over they had a standard price that they charged, which was a dollar or a dollar and a quarter. So when Richfield would wash the car they charged the regular company price and the people were all kicking, because they had the big Neon sign up there for 59 cents.

Q. You observed that?

A. Yes, sir.

Q. Were you told by anyone in the Richfield Company that it was company operated?

A. Mr. Martin told me that they had to put company men in for a period of a couple of weeks there to operate it.

Q. That occurred right at this particular time when you were entering into lease arrangements?

A. Yes. Yes, sir.

Q. Was there anything said at that time about what products you would handle at this station?

A. Oh, definitely. They told me I should handle Richfield products, and that I had to handle 100 per cent ap- [fol. 2175] proved accessories and tires and batteries, Richfield approved accessories.

Q. Did you make any investment in that station, put any of your money into it?

A. Do you mean when I first took it over?

Q. Yes, sir.

A. About, as close as I can figure, two to three thousand dollars. I bought my own lube equipment and accessories—I mean the equipment.

Mr. DeMartini: Pardon me. This is the Westwood station?

The Witness: Yes, sir, at 1001 Gayley.

By Mr. Somerville:

Q. At some subsequent time did you act as an authorized TBA distributor for Richfield?

A. Yes, sir. About two years after I was at 1001 Gayley I took over the distributorship for TBA and purchased a truck and started a route.

Q. Did you have any written contract, sir?

A. No, sir. It was a verbal agreement.

Q. With whom did you make those verbal understandings?

A. With the branch manager of Richfield, which at that time was—they had a change about that time, so it was either Johnny Quigg or Buck Moseley, as I knew the boy.

Q. Where did these conversations concerning what you were to do occur?

A. In the station at 1001 Gayley Avenue.

[fol. 2176] Q. What was said with reference to the products you should handle?

A. Well, they said if I was going to be a TBA operator that I had to handle the Richfield approved accessories, tires and batteries, and they gave me a list of all their approved items.

Q. Where did you receive these products?

A. They were delivered to my door. I would write an order out, which usually the merchandiser would take the order, and I believe he sent one to Richfield and the other to Goodyear or whoever they were purchasing the products from.

Q. What was said with respect to the accounts that you would supply?

A. Well, they told us to make the rounds, stop at each station. We would usually stop once or twice a week. Then the merchandiser would usually, every week, would come in and check our order book to see what the service stations were buying.

Q. Did you sell only to Richfield accounts, that is, to those stations handling Richfield gasoline?

A. Yes, sir. My truck only stopped at Richfield stations.

Q. How many, approximately, were there?

A. About 20.

Q. In what area?

A. About 20 and I was in the area of Venice, Santa [fol. 2177] Monica, Beverly Hills, Pacific Palisades, Ocean Park, and Westwood.

Q. You do know the distinction between a leased out type of station and a station under sales and paint contracts?

A. Yes, sir.

Q. Having had both types yourself?

A. Yes, sir.

Q. Did you have stations of both types?

A. I had both types at the same time.

Q. As a part of those original verbal understandings that were entered into on the TBA distributorship was anything said about whether you could handle products,

distribute products to these stations other than the approved?

A. No, sir. They said we had to distribute their approved products or we would lose our TBA distributorship.

Q. Did you make any reports of sales that you made to any Richfield representatives?

A. They would usually drop by and out of our order book take off a copy of each one, which naturally was the same as in the report.

Q. Did you have any discussions with merchandisers concerning the particular competitive situations in service stations?

A. I don't quite follow you on that one, sir.

Q. Did you ever discuss with any Richfield representatives the fact that the particular station handling Richfield gasoline was not buying TBA or was handling com-
[fol. 2178] petitive products?

A. Oh, yes. They would drop in and ask me if I had been stopping at a certain service station, and I would say "yes," and they would say, "Well——"

Q. Who would drop in?

A. The merchandiser from Richfield.

Q. When?

A. Once a week he would drop in, and he would usually check in the order book and he would ask, if there was a certain station that was not buying any tires and batteries, he would ask if I had been stopping there and I would tell him, "Yes," and "They just didn't need anything." And he would say, "Well, we will drop around and see why he is not buying them." And they usually would.

Q. Did you ever ask any representative of Richfield about handling additional lines of products in addition to the authorized products?

A. Oh, several times. I mean we would have things for——

Q. Wait a minute, slow down until we find out who said what and when and where. Who did you have such discussions with?

A. Well, I have discussed with Johnny Quigg and Buck

Moseley and Dick Mahan, several of them that work for Richfield.

[fol. 2179] Q. Where did such discussions occur?

A. At the service station. I would tell them that we had——

Q. Were the discussions of the same general nature or tenor?

A. Yes, sir. I would tell them that we had had several requests for U. S. Royal tires and we would like to supply them to the stations because they have a customer that likes that particular type of tire. And they would say, "Well, I am sorry. You will just have to sell them on the Goodyear tire."

Q. And who would say that, specifically?

A. Well, Mr. Moseley told me several times, Johnny Quigg and Dick Mahan, who was a merchandiser, Mr. Mahan.

Q. Did you hire any men at your station?

A. Yes, sir. I always had two or three in my employ.

Q. What was your payroll average?

A. Oh, I would say five to six hundred dollars a month. I had a fellow that drove the truck. I hired the man that drove the truck and he usually worked just half a day, every day. That is about all the time it would take him to make the service stations, 20 service stations.

Q. Did you have any particular employees with you for any length of time?

A. Yes, sir. I had Mr. Bennett with me, that had been [fol. 2180] with me for—well, I think he worked about four years in that service station with me at the time.

Q. Did you subsequently go into the service, Mr. McRae?

A. Yes, I went in the service after I had had the station about three years.

Q. Did you continue to have the lease from Richfield?

A. Well, at the time I went into the service, why, Richfield told me that they would have to check me out.

Q. Were there any discussions relating to the exercise of the 24-hour clause at the time you were ready to leave for the service?

A. Yes, sir. When I went in the service, why, I wanted to keep the service station and Richfield told me, Mr.——

wait a minute. Johnny Quigg of Richfield Oil Corporation told me——

Q. Where?

A. At the service station.

Q. What was the time, sir?

A. What was the time?

Q. Yes.

A. The time was—what do you mean, the day?

Q. Well, no, but when did you go into the service?

A. Oh, in '44, in about December of 1944. Johnny Quigg came in the station and he told me that he would have to take the service station over because I was going [fol. 2181] in the service. And I told him, "Well, I figured I could still run it while I was in the service." And at that time he said, "Well, we have a 24-hour clause and we feel you can't run it in the service and we will have to take it over."

Q. Did you turn over possession?

A. Well, I told him that—well, we discussed this. This had been off and on for about a period of three months. And so finally—well, we had quite an argument on it and I threw him off the lot. And he told me that he was going to check me out. So I said, "Well, why don't you wait until the end of the month?" That was about the first week in the month. So he says, he says to me, "Okay, we will wait until the end of the month." And I said, "Well, I am not going in the service until the end of the month." Well, actually, I was going in the service within three days. So when he come back I was already in the service.

Q. Where did you go?

A. They sent me to Ft. MacArthur.

Q. Before you left did you make any arrangements for the operation of the station?

A. Yes. I told the help—I hired help and I hired a bookkeeper to make out the final checks, and I told them if they said anything about the 24-hour clause to not pay any attention to it, because I looked towards it that going into the [fol. 2182] service was just like an act of God and not to pay any attention to the 24-hour clause.

Q. Who did you leave in charge of that station?

A. I left Mr. Bennett in charge of the station and I left two men and Mr. Polkinghorn, and then a bookkeeper.

Q. Did you make arrangements for receiving regular reports on the operation of the station?

Mr. Paradise: Oh, I submit that this is immaterial.

Mr. Somerville: I will withdraw that question.

Q. Subsequently was there any further effort made to get you out of that station?

A. Yes, sir. After I was a week in Ft. MacArthur, why, Dick Mahanm of Richfield brought a summons in there and gave it to be at Ft. MacArthur to appear in court. And they——

Q. Subsequently did you experience any difficulties with respect to obtaining supplies of gasoline?

A. Well, at that time Richfield said that they were going to come down and check me out.

Q. Are you talking about Mr.——

A. Yes, I am talking about Johnny Quigg. He said he would be down and check me out.

Q. When did he say that?

A. He telephoned my men that were working at the service station and told them he would be down in the morning to check them out.

[fol. 2183] Mr. Paradise: Just a moment.

The Court: Just a moment. That will be stricken. You cannot testify to what he told them. That is stricken.

Mr. Paradise: I would like to make an objection to this entire line of testimony. While it is apparently a very sad story, I do not see that it has anything to do with an anti-trust case and submit that this is immaterial.

The Court: It is the manner of terminating these agreements. All right, go on if you know. When were you checked out? Let us not go over your troubles. When were you checked out?

The Witness: Out of the service station?

The Court: Yes.

The Witness: Well, about, as close as I can figure, it was in '46.

The Court: All right.

Mr. Somerville: Well, I think that is all for the present.

The Court: All right.

Cross examination.

By Mr. DeMartini:

Q. Referring to the original sales contract that you made on the Ocean Park station, Mr. McRae, which is Government's Exhibit 19, that is dated December 2nd, 1941. That was entered into after you acquired title to the property, is that correct?

[fol. 2184] A. Yes, sir.

Q. In other words, there was then a change in your method of operations from an L-O operator to sales contract dealer, is that correct?

A. That is right, sir.

Q. At the same time you entered into a paint agreement which is also dated December 2nd, 1941, is that correct?

A. That is right, sir.

Q. At that time the station was painted in Richfield colors, was it not?

A. That is right, sir.

Q. Did you request the paint agreement in connection with the execution of the sales contract?

A. No. When we signed the lease, why, that is customary that you sign a lease that Richfield repaints the station.

Q. Did you have any conversation with respect to painting at this time?

A. Yes, sir, we did.

Q. What was that conversation?

A. I had conversation with Mr. Cook at the time—I believe it was Mr. Cook, the merchandiser, and I also talked with Mr. Martin and told him that I would be willing to handle Richfield products but I wanted the station painted. I had to have it looking nice, being so close to the beach [fol. 2185] air, naturally it rusted up quite a bit.

Q. That is what I mean, you asked that the station be painted?

A. Yes, sir. That is right, sir.

Q. You understand the difference between an L-O operator and a 337 dealer, having occupied both functions, do you not?

A. Well, what way do you mean? I know the two different types.

The Court: That is merely a preliminary question.

A. Yes, sir. I know the two types.

By Mr. DeMartini:

Q. In connection with the L-O station you understand that there is a 24-hour termination privilege in the lease?

A. Yes, there is one. There was one at the time. I don't know whether there is now.

Q. There was one at your time?

A. Yes, sir.

Q. What did you understand was the nature of that 24-hour privilege? What was it in there for?

A. Well, to me and to everyone that has operated that I ever talked to, it was more or less a leverage that if you don't handle certain types of products, which I had been told hundreds of times, why, they would check us out in 24 hours.

Q. Well, you were also required to keep the station [fol. 2186] clean, to wear uniforms and to keep certain hours, were you not?

A. Well, we didn't—they were not as interested in that. They checked us and asked us once in a while, yes. I don't think they would walk in the restrooms once in every three or four months.

[fol. 2187] Q. But they did have merchandisers call on you?

A. Yes, he would call.

Q. They would check the restrooms, irrespective——

A. Well, very seldom. They were more interested in checking our products, to see what we were handling.

Q. This investment of two or three thousand dollars that you put into the Westwood station, what did it consist of?

A. Well, I bought out the tires, and tubes, and batteries, and my equipment, and my lube cabinet, and washrack equipment, you know, everything that it would take to operate a service station, air gauges, and stuff like that.

Q. When you gave up that station finally, did you sell the merchandise located in the station with the gasoline and oil and approved TBA to the incoming operator?

A. Yes, sir, I did, excepting I had some A-C spark plugs, and like that, that I had under the counter. That I took with me. They said he didn't have to buy them.

Q. In connection with the TBA operation, which you had in 19— was it 1942, Mr. McRae?

A. I think it was '43, as close as I can figure.

Q. What did you handle? What types of TBA?

A. Well, I handled Goodyear tires, Goodyear batteries, Champion spark plugs, and at that time they had mops and floor polishes, and brooms, and——

[fol. 2188] Q. You didn't have to sell most of that stuff, did you?

A. Pardon, sir?

Q. You did not have to sell it, did you?

A. Well, I sold it at the service station, and I also delivered it to the others.

Q. What I mean is, it did not require any sales effort to get rid of it, did it, in 1943?

A. Well, it always did. As long as I was in business, yes, sir, it did, because we always had within a block of us a Western Auto or a Pep Boys that could undersell us.

Q. In 1943? You are speaking of 1943, are you?

A. Yes, sir.

Q. Do you mean that dealers were not prorated or rationed as to tires and wanted more than you could possibly supply them, or that you were given certain quotas of tires and batteries?

A. You are asking me in '43. I had many a man, and some of them were movie stars, but what they would leave their car in my service station and walk down the street to Western Auto or Pep Boys and have a battery delivered to their car.

The Court: That didn't start until 1944. The government didn't ask us to turn in the extra tires until 1944. I happen to know, because they rationed me a little Plymouth [fol. 2189] at the end of 1942, and it was a year and a half afterwards that they began turning in the tires. I happen to know because the reporter here from the Times asked me to act as a demonstrator so that they could take a picture of me beside the little Plymouth in the act of doing the things you are supposed to do before you turn them in.

By Mr. DeMartini:

Q. Well, anyway, with respect to your TBA operations, you acted as a seller of those products to the various stations?

A. That's right, sir.

Q. And that was your sole purpose?

A. That's right.

Q. You did not have any control or direction over any of those stations?

A. Well, we owned the trucks, and we owned the products, and we bought them and delivered them to them. I would say that was some control.

The Court: You mean you had an interest——

The Witness: That's right.

The Court: —in disposing of the products because you had been charged for them?

The Witness: That's right.

The Court: And you wanted to make a profit, in that the business didn't just run itself?

The Witness: That's right.

[fol. 2190] By Mr. DeMartini:

Q. Did you ever tell an L-O operator he had to buy from you?

A. Yes, we told him. Do you want me to tell you what he told me? I wouldn't tell it in court.

Mr. DeMartini: That is all, Mr. McRae.

The Court: Any further questions?

Mr. Somerville: No questions.

The Court: Step down.

(Witness excused.)

The Court: Call you next witness.

Don McCombs, called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

The Clerk: What is your name, please?

The Witness: Don McCombs.

The Clerk: M-c-C-o-m-b-s, Don?
The Witness: Right.

By Mr. Hall:

Q. Where do you reside, Mr. McCombs?
A. At Kooskia, Idaho.
Q. Would you mind spelling that for the reporter, please?
[fol. 2191] A. K-o-o-s-k-i-a.
Q. And your present occupation?
A. Farmer.
Q. Did you ever lease a station for the operation of a gasoline service station in Spokane, Washington?
A. Yes, sir.
Q. And when?
A. I took it over September 1, 1941.
Q. Will you state with whom you first discussed the obtaining of this lease with Richfield?
A. Lloyd Ek, the man that was in the station.
Q. But did you discuss it with any Richfield representative?
A. Yes, Pep Hagin and Earl Winn.
Q. And this was before the lease was signed?
A. Yes, sir.
Q. What discussions did you have with them?
A. Well, I told them I would like to have the station when Ek left, and that I had four and a half years' experience with Standard Stations and felt that I could do a good business there.
Q. Did you have any discussion with them at that time relative to the products that should be handled, or the manner in which the station should be operated?
A. No, I didn't ask them, but they told me.
[fol. 2192] Q. What did they tell you?
A. That I should sell Richfield petroleum products and any accessory items I bought should be bought from Colyear Motor Sales.
Q. Who were Colyear Motor Sales at that time?
A. A jobber that had a tie-in with Richfield.

Mr. Hall: Will you stipulate that Mr. McCombs occupied this station under three forms of 542 leases?

Mr. DeMartini: Yes, it will be stipulated that he occupied the station under an L-O lease, form 542, dated September 1, 1941, bearing print date 3-41; the second lease dated January 21, 1942, bearing print date 3-41; and a third one dated April 1, 1942, bearing print date 5-41, and one dated March 27, 1947, bearing print date 3-46.

Mr. Hall: That is right.

By Mr. Hall:

Q. When was the first time, Mr. McCombs—first you entered into a lease with them after these discussions with Mr. Hagin and Mr. Winn?

A. That's right.

Q. And you occupied the station until about what date?

A. Until July 1, 1949.

Q. 1949?

A. Yes, sir.

Q. Will you tell us the first time you ever had any difficulty or experiences with any of the Richfield representa-[fol. 2193] tives relative to the products that you were handling?

A. Well, the first instance I remember was, I believe, early in 1945.

Q. What was that instance? First, what did it concern, —what product?

A. Quaker State chassis lubricant.

Q. And what Richfield representative made any objection to you about it?

A. A merchandiser by the name of Jack Emerson.

Q. What were the circumstances surrounding that experience?

A. Well, I had ordered 50 pounds of Quaker State chassis lube, and Mr. Emerson came in and saw it in the lube room.

Q. What did he say to you?

A. Asked me to come into the office, he wanted to talk to me.

Q. What did he say to you when you got in the office?

A. Asked me where I got that stuff.

Q. What did you say to him?

A. I told him I bought it from Cruz Oil Company.

Q. Did you tell him why?

A. Yes, sir.

Q. What did you tell him? Tell us the conversation you [fol. 2194] had with Mr. Emerson on that occasion.

A. Well, he asked me why I had it there, and I told him it was necessary to have a lighter grease than Richfield could furnish during the cold weather. And he said, "Well, you get that out of here, and we'll get you something you can use."

Q. Was that all of that particular incident?

A. Well, he said——

Q. Did he make any other statements?

A. He said, "I have a notion to check you out of here right now."

Q. Anything else at that particular time?

A. I don't recall anything definite.

Q. Now, was there any other time—did you ever have any trouble with Mr. Emerson about lubricants or motor oil?

A. Well, he knew that I had competitive oils in small quantities, but he asked me to keep them out of sight. There was no real trouble over it, no.

Q. What competitive oils did you handle?

A. Quaker State, Conoco, Ring-Free.

Q. Is that MacMillan's Ring-Free?

A. Yes, sir.

Q. What did he actually tell you about those oils that you had in there?

A. Well, he said to keep them out of sight, and at [fol. 2195] intervals of maybe every six months or once a year he would drop in and say to be sure to get them out of sight and to clean up the station, that the big shots from Seattle were coming.

Q. And how often was that?

A. Well, it was whenever they came over; possibly every six months or a year.

Q. Did he tell you why he wanted you to clean up, because the big shots from Seattle were coming?

A. Well, he asked me to hide the oils, so that they wouldn't see them, and he wouldn't get into trouble I suppose.

Q. Were you carrying any other competitive or off brand

merchandise, or merchandise that was not approved by Richfield at the time?

A. Yes, quite a few items.

Q. Did he ask you to put that away, too, when the big shots were coming?

A. No, not the shelf stock in the sales room.

Q. Will you tell us the incident you had relative to Lincoln batteries? First, when did you first start to stock Lincoln batteries?

A. Well, I can't say exactly, but it was possibly in '43 or '44, when Goodyears became hard to get.

Q. When was the first time that Richfield ever objected [fol. 2196] to your handling Lincoln batteries?

A. When the supply of Goodyears improved. I can't tell you just when that was.

Q. When was that? Would it be '44, '45, '46?

A. I don't believe it was before '45. It must have been in '45.

Q. Who made the complaint to you?

A. Mr. Emerson.

Q. I can't hear you.

A. Mr. Emerson. Mr. Emerson.

Q. Mr. Emerson. What did he say to you about the Lincoln batteries?

A. He said that now that Goodyears were available, they would expect me to sell out my stock of Lincolns and not replace any of them.

Q. What did you tell him?

A. I told him I preferred to keep selling them because there was a better margin on them, easier to sell.

Q. Did you make up a chart for his examination, to show the differences between the prices that you received, and your discounts, and the guarantees, as between the Goodyear batteries and the Lincoln batteries?

A. I made up a chart; not especially for him.

Q. Did you show it to him?

A. I couldn't say I showed it to Mr. Emerson.

[fol. 2197] Q. To whom did you show it at Richfield?

A. I showed it to Ivan Matthews and Al Cloninger.

Q. What reasons did you give to any of these gentlemen

for handling Lincoln batteries in preference to Goodyear batteries?

A. The Lincoln batteries had a longer guarantee, and I could sell them cheaper, and it had a wider margin of profit.

Q. I will hand you this paper, and ask you if that is the comparative chart that you used to explain to these Richfield gentlemen the differences in price.

A. Yes, sir.

Q. Will you select from that paper one of the best sellers of comparable items and compare the price at which you could sell a Goodyear battery and a Lincoln battery?

A. Well, the Goodyear battery that had a 27-month guarantee was comparable to the Lincoln battery that had a 30-month guarantee.

Q. What would the price to the customer be, of the Goodyear battery?

A. $26.45 was the price Goodyear set in their price list.

Q. What was the price to the customer of the Lincoln battery?

A. I sold it for $19.95.

[fol. 2198] Q. What margin of profit was there in it for you on the Goodyear battery?

A. $5.78.

Q. What was the margin of profit on the Lincoln battery?

A. $6.86.

The Court: What was the upshot of the conversation? What did they say?

The Witness: Well, they said I had a point there.

The Court: Ultimately what happened?

The Witness: Well, they kept——

The Court: What finally happened?

The Witness: They kept at me to eliminate the Lincolns until it came to a climax in May of 1949.

The Court: What did they do?

The Witness: Well, Richfield put on a sales contest. They required that I buy Goodyear batteries in order to fill the quotas that were expected of me.

The Court: So you bought them?

The Witness: So I bought them.

By Mr. Hall:

Q. When you checked out of this station in July of 1949, did you have any of these batteries on hand, these Lincoln batteries?

A. Yes, sir.

Q. How many?

[fol. 2199] A. I had 22 on hand.

Q. Will you explain to the court the circumstances relative to what happened to those Lincoln batteries when you transferred the station over?

A. Well, the man that was going to buy me out came out to the station to talk to the merchandiser.

Mr. Paradise: If this calls for conversations, I would like a better foundation laid, if the court please, as to time and place, and parties present.

The Court: We are talking about the time of his checking out.

The Witness: That was in June, 1949.

The Court: All right. Go ahead. Who was the merchandiser?

The Witness: The merchandiser was Al Cloninger.

The Court: And the buyer, the man who was following you?

The Witness: L. F. Rhodes.

The Court: Go ahead.

The Witness: Ivan Matthews was already there.

By Mr. Hall:

Q. Tell us the conversation that went on at that time.

A. Ivan told——

Q. Ivan Matthews?

A. Ivan Matthews told Lou Rhodes, L. F. Rhodes, that [fol. 2200] after I left there there were to be no Lincoln batteries in the station, and he was to sell Goodyears.

The Court: Did you get credit for the value of the invoices on these off brand——

The Witness: No, sir.

The Court: —on the off brand items?

The Witness: No, sir, I didn't.

The Court: What did you have to do with them?

The Witness: I had to get them out of the station.
The Court: Oh, you took them with you?
The Witness: Yes, sir.

By Mr. Hall:

Q. Did you take the batteries with you?
The Court: How did you happen to have so much money invested in batteries?
The Witness: Oh, the batteries sold good.
The Court: I mean, did you have to stock them?
The Witness: I bought them in 25 lots because of an extra five per cent discount, a quantity discount.
The Court: Oh, I see. I didn't know anybody bought in large quantities. Even the biggest stations are content with three, four, or five.

By Mr. Hall:

Q. What happened to those batteries?
A. When I sold my home in Spokane and left town, I had to store them some place, and I got permission from Mr. Rhodes to store them in the basement of his home.
[fol. 2201] Q. That was your successor in the station?
A. Yes, sir.
Q. Did he help you dispose of them?
A. I stored them there, and he helped me to dispose of most of them.
Q. Did you suffer any loss on them?
A. Yes. I sold them for cost, or less.

Mr. Hall: Will counsel stipuate that the Mr. Rhodes he mentioned is the Lou F. Rhodes who testified relative to this same station last week?
Mr. Paradise: I don't know.
Mr. Hall: The record will show that.
The Court: All right.

By Mr. Hall:

Q. What spark plugs did you handle, Mr. McCombs?
A. Champion.
Q. Are those a Richfield-approved item?
A. Yes, sir.

Q. Did you ever have any trouble with Richfield relative to handling any Champion spark plugs?

A. Yes, sir, I did.

Q. Who made the criticism to you?

A. A Mr. McBride.

Q. What did he say? First, when was it?

A. It was in February of '47.

Q. What did he say to you?

A. No—yes, that is right, '47.

[fol. 2202] Q. What did he say to you?

A. He wanted to know where I was buying my spark plugs, since it didn't show in Richfield's records that I bought any great amount from them, while I had about 700 on hand.

Q. What did you tell him?

A. I told him I bought them from another jobber because I got a better price on them.

Q. How much better price did you get from the other jobber rather than from the regular Richfield distributor?

A. I could buy them in smaller quantities at six cents a piece less.

Q. Did you give him that information?

A. Yes, sir.

Q. What did he say?

A. He wanted to know the name of the jobber.

Q. What did he say he was going to do about it?

A. He said he would see that they lost their franchise over selling them in small quantities at the large quantity price.

The Court: Gentlemen, for the record, I will say that the record shows—my own recollection is to the same effect—but the record shows that Louis F. Rhodes succeeded this gentleman whose station he talks about. He testifies on page 454 of the record that he approached some of the Richfield men and told them he wanted to lease the station [fol. 2203] from them, buy the station from Don McCombs.

Mr. Hall: Thank you, your Honor. And I believe I am correct that he stated or testified that he took over a certain number of these batteries and sold them.

The Court: Oh, yes. In fact, on page 454 he states:

"And he said that would be all right. But he did object to me buying some of Don McComb's merchandise."

Then the question is: "What did he say?"

"A. He said I couldn't buy Don McComb's 14 Lincoln batteries which were in stock at that time."

And then there was some conversation between Mr. Hall and the court and then he said:

"Were those batteries in the station at the time?

"A. Yes.

"Q. Do you know whether or not Mr. Cloninger or any other Richfield man had caused any trouble about those 14 Lincoln batteries?"

He didn't know about it. However, it is quite apparent that this is the same station that we are talking about.

Mr. Hall: I would say the address is the same, your Honor.

The Court: All right.

By Mr. Hall:

Q. What filters did you handle in the station?

[fol. 2204] A. Mainly Frams.

Q. And did anyone from Richfield ever object to your handling Fram filters?

A. Yes.

Q. Who?

A. Jack Emerson, Al Cloninger, Brown, Neff, all merchandisers.

A. At the time you transferred the station to Mr. Rhodes was there anything done relative to the Fram filters?

A. They asked him not to buy them from me.

Q. Did he buy them from you?

A. No.

Q. What did you eventually have to do with those filters?

A. I got the Fram dealer to take them back at a discount.

Q. Did that result in a net loss to you from what you had had to pay for them?

A. Yes, sir, five per cent—ten per cent it was.

Q. What fan belts did you handle?

A. When?

Q. Well, let's say the year 1949.

A. In '49 I was handling Goodyears.

Q. What did you handle prior to that?

A. Thermoids.

[fol. 2205] Q. Did any Richfield official make any objection to your handling those?

A. Yes, sir.

Q. Who?

A. Mr. McBride, especially.

Q. About when?

A. February '47.

Q. What did he tell you about it?

A. He told me to replace them with Goodyears, sell them out and replace the stock with Goodyears.

Q. Did he make any other statement to you at that time?

A. Well, to take the rack down that said "Thermoid Fan Belts" on it.

Q. Was the driveway in this station in good, usable condition at the time you got into the station? Were you in therein 1941?

A. Not too good, no.

Q. Did you make complaint to Richfield about the driveway?

A. The next winter, yes.

Q. What was the effect of any defect in that driveway as far as your operation of the station?

A. Well, when it rained the downspout filled this depression.

Q. Where was this depression?

[fol. 2206] A. Right at the entrance to the driveway.

Mr. Hall: Will you mark this for identification?

The Clerk: Government's Exhibit 20 marked for identification.

(The document referred to was marked Plaintiff's Exhibit 20 for identification.)

By Mr. Hall:

Q. Did you make any complaint to Richfield from time to time?

A. Yes, sir.

Q. Of that?

A. Over a period of eight years.

Q. Over a period of eight years. Was it ever fixed?

Mr. Paradise: Again, I say that this is immaterial, your Honor. We seem to be trying every type of case except exclusive dealing.

The Court: Just a minute.

Mr. Hall: Only to the extent, your Honor, of the testimony that has been brought out previously in this case relative to investment and the way they kept up the station. I just wanted to show that this man for eight years could not get a replacement fixed there, that is all. That is the only purpose it had.

Mr. Paradise: Is that what we are being accused of in this lawsuit?

Mr. Hall: No. It is not a matter of fairness. It is a matter of investment.

[fol. 2207] The Court: No, no. The only thing we are interested in is control and the means of achieving it, and the other things are not material. I will sustain the objection to any further inquiry.

Mr. Hall: Well, that ended it. That was the last question I had on it.

The Court: All right. Then it becomes an ultimate question by striking it out.

The Clerk: Exhibit 20 is withdrawn.

The Court: It is all up to you, we will adjourn as soon as you finish.

Mr. DeMartini: All right.

Cross-examination.

By Mr. DeMartini:

Q. Mr. McCombs, the only trouble that you had with Richfield was not with respect to competitive merchandise, was it?

A. No. They asked me to operate longer hours at times.

Q. They also asked you to keep a clean station, didn't they?

A. Yes, sir.

The Court: How large a town is this?

The Witness: Spokane?

The Court: Oh, you were in Spokane?

The Witness: That is where the station was.

[fol. 2208] The Court: I thought it was across the line.

The Witness: The station was in Spokane. I live in Idaho now.

The Court: Oh, I beg your pardon.

The Clerk: Defendant's Exhibit J marked for identification.

(The document referred to was marked Defendant's Exhibit J for identification.)

The Court: I would insult Spokane by asking a good friend. That is big enough to have a Federal Judge there all the time, the Eastern District of Washington, Judge Driver. But I got your residence, your present residence lingered in my mind because of the Indian name of the town.

By Mr. DeMartini:

Q. You are familiar with Form 205, are you not, Mr. McCombs?

A. Not by form number probably.

Q. It is entitled "Survey of Station Operations."

A. That is right.

Q. This one is dated January 29, 1948. It bears your signature, is that correct?

A. Yes, sir.

Q. And the signature of Mr. Neff, doesn't it?

A. Yes, sir.

Q. It has opposite—do you understand what the letters "S U C" and "TBC" mean?

[fol. 2209] A. Well, that is "Satisfactory" and that is "Unsatisfactory" and that is "Corrected", I believe, and that is "To be corrected."

Q. Yes. Now, I will show you opposite the item entitled

"Maintenance scheduled" the letter "U" is checked and the letters "TBC" are checked. Is that not correct?

A. Yes.

Q. And the same is true of "Building exterior clean", "Building interior clean," "Condition of paint," "Yard and driveways," "Planting area," "Adjoining area," "Windows clean," "Signs clean," "Pumps clean," "Floor clean," "Toilet bowl clean," "Wash basin clean," "Seat covers," "Coat hooks," etc. That is correct, they were all marked "Unsatisfactory" and "To be corrected," is that correct?

A. Yes. May I explain this?

Q. Yes, you may.

A. That was previous to a paint job which the company does.

Q. But there are items on here with respect to restrooms that indicate that they were unclean?

A. Yes, sir.

Mr. DeMartini: I will introduce this into evidence.

The Court: All right.

Mr. Hall: Your Honor, the only thing I have to say, it has no more bearing than the broken pavement. I can say [fol. 2210] I have no particular objection.

The Court: No, it has bearing with the cause of the dissatisfaction. There is evidence from which it will no doubt be argued that one was used as an excuse for the other, so the two are related. You notice Mr. DeMartini did not object to your inquiry about the depression there in the pavement. He objected when you went into details about the number of years it took him to get it repaired.

The Clerk: Is this admitted, then, your Honor?

The Court: Yes, it may be received.

The Clerk: J in evidence.

(The document referred to was marked Defendant's Exhibit J and received in evidence.)

The Court: I have traveled a good deal all over the Pacific Coast. I will say if they police—not only this group but all stations, all of them—if they police the restrooms it would be much better for the traveling public.

Mr. Hall: I agree with your Honor it would be.

The Court: I note in going up and down the entire coast in March it has gotten so I would have to carry soap and towels right in the compartment of the car, because half of the time you would go in there and there would not be any. They would have containers. The soap containers would be empty and most of the time they would not have any paper, and some of the small stations locked them for that reason. They claimed in that way they kept control over [fol. 2211] them. So it is an important item. All right.

By Mr. DeMartini:

Q. Instead of going into the details of these rental changes, Mr. McCombs, I will just ask you. There were several rental changes in your rentals, reducing them from time to time and increasing them from time to time, depending upon conditions, is that correct?

A. Yes, sir.

The Court: Under what form were you operating at the time of transfer to Rhodes? Under what form were you operating?

The Witness: I——

By Mr. DeMartini:

Q. You were always under an L-O form of lease?

A. Yes.

The Court: The same type?

The Witness: The same form.

The Court: That was prompted by what you said in change of rent?

The Witness: Just the basic rent was changed.

The Court: You had an L-O form?

The Witness: Yes, sir.

The Court: All right.

Mr. DeMartini: That is all.

The Court: That is all. Step down.

[fol. 2212] Mr. Hall: I have no witness at this present time.

The Court: That is good. I would not let you in with one now, anyway.

Mr. Hall: I am awfully glad you would not.

The Court: Gentlemen, I will defer to your wishes in the matter and it will be understood that when we finish tomorrow, that this case will be continued until Tuesday. So I thought I would let you know now.

Mr. Paradise: Thank you, your Honor.

Mr. Dixon: May it please the court, before we adjourn, may the Government request permission to withdraw some of the exhibits from the record or from the custody of the clerk for the purpose of making photostats?

The Court: That is all right. Mr. Childress has full authority to do that.

Mr. Dixon: Thank you, your Honor.

The Court: For making photostats.

The Clerk: Your Honor, that same request was made by the defense, too. Would that be permissible?

The Court: They have the same opportunity.

The Clerk: To remove them actually physically from the building. It means nothing to us.

Mr. Paradise: It does not matter particularly, your Honor. We have our own photostatic department.

The Court: Why don't you patronize the Government? [fols. 2213-2216] You are so nice to each other, why don't you patronize the Government? Incidentally, I do not know whether he has any paper or not. I think he has run out of paper because I am waiting for some.

Mr. Paradise: Thank you. We can do that just as well.

The Court: The clerk's office has very good equipment. I think their charges are within the range of other prices, what they charge officially. At any rate, if you want to take them out, why, it is your responsibility and you can give Mr. Childress any required receipts. You may supply him with any receipts he may request for the sake of the record, because he is responsible for them.

All right, gentlemen. Then we will see you tomorrow.

(Whereupon, a recess was taken until 10:00 o'clock a. m. of the following day, Friday, May 18, 1951.)

[fol. 2217] Friday, May 18, 1951, 10:00 A. M.

The Court: All right, cause on trial.
Mr. Hall: Mr. DeLonge.

ROBERT J. DELONGE, called as a witness by the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: What is your name, please?
The Witness: Robert J. DeLonge.

Direct examination.

By Mr. Hall:

Q. Where do you reside, Mr. DeLonge?
A. Olympia, Washington.
Q. What is your present occupation?
A. I am a plywood producer or plywood worker.
Q. Were you ever the lessee of a gasoline service station selling Richfield products?
A. Yes.
Q. When did you first enter into the operation?
A. September 1st, 1946.
Q. At what address?
A. 404 West Fourth Street, Olympia, Washington.
Q. Will you tell us the circumstances just immediately prior to your going into the station, who you talked with in Richfield?
[fol. 2218] A. I worked previously for a man by the name of Fred West who was an operator of a Richfield service station for several months, and during the time I was working for Mr. West I indicated my desire to find a station of my own. Mr. Orville Kaiser——

Mr. Paradise: I must object to the witness' conclusions.
The Court: Yes.
Mr. Paradise: I think counsel should call for conversations and lay foundation.
The Court: Tell us what was said.

By Mr. Hall:

Q. Who did you first contact?

A. Mr. Kaiser, the distributor there, Mr. Orville Kaiser, the local distributor.

Q. Was he also the TBA distributor for Richfield?

A. Yes, he was.

Q. What was the conversation between you and Mr. Kaiser?

A. I told Mr. Kaiser that I would like to have a station of my own. And he asked me if I would like to have the station in which I was working. I told him that I didn't care for it. So he told me that there was a station soon going to be opened at 404 West Fourth Street, the Olympia One-Stop Service, and he asked me if I would like to have that one and I said, "I certainly would." He told me to go down and look it over and talk with the boys that were operating it and see what I could do about it.

[fol. 2219] Q. And did you subsequently have any further conversations with the Richfield men after you had talked to the men at the station?

A. Yes, I did.

Q. Were you desirous then of going into the station?

A. Yes, I was.

Q. Then who did you talk to?

A. I talked to Mr. Kaiser and the sales representative. I can't remember his name at the present time because he left the district right shortly after I was in there. But Mr. Kaiser——

Q. What did you tell Mr. Kaiser? This was not Mr. Dinsmore, was it?

A. No, it was not Mr. Dinsmore. I told Mr. Kaiser that the boys down there wanted to sell, all right, and that they wanted a pretty steep price for the place. And he asked me how much they wanted and I told him that they had told me that each one of them wanted $3,000. That was $6,000 for the place. Mr. Kaiser told me that was too much money and if I would wait a week, I could go in there for nothing.

Q. Was there anything further said at that time?

A. Yes. I told Mr. Kaiser I didn't want that kind of a deal, that I expected to do business there after I had pur-

chased it and I didn't want any bad reputation, as I didn't want those boys going out and saying that they had been [fol. 2220] robbed of their business and I had taken it over. I didn't want to be responsible for that. And he said, "Well, suit yourself, but you could have bought a lot cheaper than that." So we dropped the conversation there.

Q. What was the next step in this procedure?

A. I had another conversation with Mr. Kaiser and told him that I had made arrangements to buy one of the partners out for $3,000. And he said, "Well, that is okay with me but I don't know what you are buying, but go ahead." So I gave the man a check for $3,000 in cash and assumed a half interest in the place of business.

Q. And when did you go into operation of that business?

A. September 10th I became a legal part owner of the place.

Q. And when did you execute a lease with—first, I will ask you did you execute any lease with Richfield at that time?

A. No.

Q. When did you execute a lease with Richfield?

A. On October 29th, 1946 is the closest recollection I have.

[fol. 2221] Q. I will hand you this paper, and ask you if that is the lease that you executed with the Richfield Oil Corporation.

A. The lease, minus this top part, is the original lease.

Q. Yes.

A. Yes, sir, that is.

Q. By that time this was just signed by yourself, and you partner is not existent in that arrangement; is that correct.

A. No, not at the time this lease was consummated.

Mr. Hall: Will counsel stipulate that this was executed on Form 542, print date of 11-45, between Richfield Oil Corporation and Robert J. DeLonge, dated the 29th day of October, 1946?

Mr. Paradise: Yes, on an L-O form.

By Mr. Hall:

Q. Now, did Mr. Kaiser, or any other Richfield representative, make any statements to you as to the manner in which you should operate that business?

A. Mr. Kaiser told me it was to be my own place of business, and I was my own business manager, and as long as I operated it to the benefit of the Richfield Oil Corporation, I would be able to do as I pleased there.

Q. After you went into the station did you have any difficulties with Richfield Oil or any of its representatives, [fol. 2222] relative to the operation of that station?

A. Yes, sir, several.

Q. Calling your attention to the matter of the hoist, the lubricating hoist——

A. Yes, sir.

Q. Will you tell us the circumstances relative to that?

A. The lubricating hoist was an old electric hoist that had been in the place ever since it was built, and was very badly worn out, and shortly after I took over the place an employee of mine was greasing a car on it, and the cables broke and let the car down, and damaged the car to a very serious extent, and I was without a hoist.

Q. Did you take this matter up with the Richfield people?

A. Immediately.

Q. To whom did you talk?

A. Mr. Kaiser.

Q. And what did he say?

A. He told me he would be right down to look at it, and not move anything on the hoist, and said he would be there within 10 minutes. I waited until—that happened about 2:00 o'clock in the afternoon, and I waited until after 7:00 that evening, and no one had shown up, so I had to take the man's car off the hoist with a wrecker, and send it to a [fol. 2223] repair shop to get it fixed.

Q. When did Mr. Kaiser show up?

A. He showed up about 7:00 o'clock that evening.

Q. What was that conversation?

A. He came in and looked at it, and he said, "Well, that's pretty badly wrecked, isn't it?"

I said, "It surely is."

He said, "Well, tomorrow I will get a man down here to give us a bid on fixing it up."

And I said, "You don't need to fix it up for me, because I absolutely refuse to let a man use that hoist any more. It's not safe for life, nor property."

And he said, "Well, it can be fixed. It can be fixed."

I said, "No, sir, it isn't safe, and I don't want it fixed. I want a hoist in there to do my work on in safety."

He said, "Well, that's the only thing I can do for it, is fix it up."

Well, I said, "I had better see somebody else, then." I said, "Who is the next person I should contact?"

He said, "Well, you will have to contact Richfield Oil representatives."

Then I called Mr. Dinsmore——

Mr. Paradise: I think you have answered the question.

The Witness: Thank you.

Mr. Hall: I asked for the conversation.

[fol. 2224] The Court: He is telling the whole chronicle of events. That's all right. Go ahead.

By Mr. Hall:

Q. Did you call Mr. Dinsmore?

A. I called Mr. Dinsmore, yes, sir, and Mr. Dinsmore didn't show up for about three days, and when he did come down, he said, "Well, that's not our responsibility. That hoist doesn't belong to Richfield. That belongs to the building owner. You will have to see the building owner for anything about that."

So that was the end of that conversation.

Q. Well, did Richfield ever replace the hoist?

A. No, sir.

Q. How long were you operating the station without a hoist?

A. Nearly three months.

Q. Was a new hoist eventually placed on the property?

A. Yes, sir.

Q. And who purchased it?

A. I did.

Q. How much did you pay for it?

A. $325 for the hoist, and then about $75 to install it.

Q. Were you ever repaid for that?

A. No, sir.

Q. During that period of time that you didn't have a [fol. 2225] hoist, how were cars lubricated?

A. We had to lubricate them with floor jacks.

Q. Did you also have any trouble with the steam cleaning hoist?

A. Yes, sir, the steam cleaning hoist was bad.

Q. That was a separate hoist from the lubricating hoist?

A. Yes, sir.

Q. What happened to that hoist?

A. I had to fix it myself.

Q. Do you recall what the cost of that was?

A. I think it was about—I can't say just exactly, but I think it was about $125.

Q. Did you take it up with any of the Richfield officials?

A. Yes, sir, I went through the same routine as I did on the first one.

Q. What did they say to that?

A. That the hoist did not belong to them, it belonged to the property owner.

Q. Did they do anything about fixing the hoist for you?

A. No, sir.

Q. During the time that you were in there, Mr. DeLonge, what lubricating oil products did you handle?

[fol. 2226] A. I handled Richfield lube, Richfield Penn and some Quaker State, some Pennzoil and some MacMillan Ring-Free.

Q. When was the first time that Richfield ever complained about your handling any of those brands that were not Richfield approved?

A. On Mr. Dinsmore's first trip to this station.

Q. Do you remember when that was?

A. No, sir, I can't say just exactly, but I would say offhand it was about the first part of November.

Q. All right. Will you tell us what happened?

A. Mr. Dinsmore came in and looked around the station, and told me everything looked very nice, but he said, "Bob, come here a minute. I want to talk to you in the office."

And I went in the office, and he looked down on my store-

room shelves, which are inside the display room, and apart from it, and said, "What's that stuff doing down there?"

And I said, "What stuff?"

He said, "That Quaker State, and Pennzoil, and MacMillan Ring-Free."

I said, "I sell it."

He said, "Who authorized you to sell that?"

And I told him that I didn't know that I had to have it endorsed to sell it, that certain customers specifically [fol. 2227] wanted that type and kind of oil, and that they were buying Richfield gasoline, but they wanted that oil in their cars and no other.

"Well," he said, "the next time I come through here, I would hate to have to make you lose this business just over a few cans of oil." He said, "It would be a good idea to get them out of here."

Q. What did you do with the oil?

A. I got it out.

Q. Did any other Richfield representative, Mr. Kaiser or anyone connected with Richfield, ever make any complaint any other time about the oil?

A. Yes, sir, Mr. Kaiser did.

Q. When was this?

A. That wasn't until after Mr. Dinsmore had come through.

Q. Could you place the date, as nearly as you can?

A. Yes, I would say it was about the middle of November.

Q. Will you tell us the conversation, and the incident relative to that?

A. Mr. Kaiser told me it had been reported to him that I was selling unauthorized brands of lubricating oil, and to save trouble for myself I should stop it immediately.

Q. And what did you tell him?

[fol. 2228] A. I told Mr. Kaiser that that was—the sale of that oil was necessary to my business progress, and that I felt that it was an imposition upon me to have to refrain from selling it.

Q. Was there anything further said at that time?

A. Yes. He said from now on I would sell Richfield products, and Richfield products only.

Q. Did you continue to carry those oils?

A. Yes, sir, I did.

Q. What did you do with them? Where did you——

A. I had to hide them on top of the office building and over the toilet.

Q. Now, will you tell us, did you have any difficulty relative to tires?

A. Yes, sir. Of course, in 1946 it was almost impossible to obtain tires of any kind, and the Richfield distributor was getting a few tires, but I wasn't getting any.

Q. How?

A. I was not getting any.

[fol. 2229] Q. I don't understand.

A. I say, the Richfield distributor, the local distributor was getting a few tires in his stock.

Q. Was that Mr. Kaiser?

A. That is right.

Q. Yes.

A. And I was not getting any.

Q. Had you made the request of him to get the tires?

A. Yes, sir, I did.

Q. And what was the conversation between you and Mr. Kaiser relative to those tires?

A. Mr. Kaiser told me that it was impossible to give me tires because I was such a large station that the business was almost a natural for me, but he had to distribute those tires in the outlying stations where a man didn't have much other incentive to draw business.

Q. Was there any further conversation at that time?

A. Yes, sir. I protested very seriously that I was the largest producer or the large salesman of gas and oil in that area, and I thought it was discrimination against me in him not to give me any tires.

Q. How did you know, Mr. DeLonge, that you were one of the largest salesmen in that area?

A. The Richfield Reporter, I believe the name of it—not "Richfield Reporter," but the Richfield Oil Corporation, [fol. 2230] every so often, published a little pamphlet and a statement in that as to the 10 highest sales outlets in the State of Washington.

Q. And where did you rate?

A. I ranked second.

Q. Let us go on with the conversation about the tires. Did he deliver you any tires?

A. Yes, sir, he did eventually. He delivered me five——

Q. Before we get to that delivery, did you get any other tires in the meantime?

A. No, sir.

Q. All right, go ahead.

A. Along in the early part of 1951—I can't give the exact date of that, either—the tank truck came in and dumped off five tires.

Q. The tank truck. Whose tank truck?

A. Mr. Kaiser's tank truck, the local distributor.

Q. And who was driving the truck?

A. Mr. Kaiser's son.

Q. What tires did he deliver?

A. He delivered five 650-15 tires.

Q. What did you tell him when he delivered those tires?

A. I told him that I absolutely couldn't use them, there was no outlet for them, no sale for them, and I could not afford to tie my money up into them and carry them in [fol. 2231] stock. Take them back to the distributor.

Q. Why were you not able to sell them?

A. Because those were the tires that were just coming out on the new cars that had just gone on the market, and there wasn't any sale for those tires then.

Q. Are most of the sales in a service station for replacement?

A. Yes, sir.

Q. What was the average size of tires you used for replacement sales?

A. It is 650-15, and better, or 16, I mean, or 600-16, either of those two sizes.

Q. What did he say when you told him that you could not sell them and he should take them back?

A. He said, "They have been consigned to you and they are here and you are going to keep them."

Q. Did you keep them?

Mr. Paradise: Who was this, please?

Mr. Hall: Kaiser's son, driving Kaiser's car.

A. Yes, sir, I kept them.

Q. Did you sell them?

A. No, sir.

Q. Now, did you ever have any difficulties relative to fan belts?

A. Yes, sir.

[fol. 2232] Q. Will you relate the circumstances on those?

A. I had a large board of fan belts on the wall and a man by the name of——

Q. Will you just explain to us briefly how a display of fan belts is accomplished?

A. Well, my fan belt board was about half as high as this wall from the panel up, and there were large hooks out from the wall every so often, and then they were marked for the sizes of the fan belts.

Q. About how many different sizes are there normally that you carry?

A. Approximately about 75 different sizes of belts.

Q. And about how many of each size does the average station like yours carry?

A. Well, in some sizes you only carry one of some sizes, but the popular sizes you would carry about two, maybe three, where you have a local distributor that you can get them from.

Q. You said you had this display. What kind of fan belts were they?

A. Well, I had some Gates fan belts up there and some other brands. I can't name them all right now.

Q. What was the Richfield recommended brand?

A. The Goodyear.

Q. And did you have any conversation with any Richfield [fol. 2233] representatives relative to those fan belts?

A. Yes, sir. Mr. Knudsen came through.

Q. Who was Mr. Knudsen?

A. Mr. Knudsen was a Richfield representative. However, I never could find out just what his capacity was. He seemed to work in all of them.

Q. Go ahead. What did he say?

A. Mr. Knudsen came around and he said, "Bob, you have got a beautiful looking station here. "But," he said, "that fan belt rack out there is going to have some attention. Come around here, I want to show you something."

And he singled out these Gates and these other fan belts that were there, and said, "Now, the Richfield Oil Corporation sells Goodyear fan belts and that is the only kind of a fan belt I want to see hanging on that rack the next time I come in here. Now," he said, "you have got an awfully nice start here and we are very happy with you, with the way you are operating the station." And he said, "Those fan belts will come off from there or somebody else will be running the station."

Q. Was anything further said?

A. Well, I said, "The people want them and this is a 24-hour station. We get people from all over the countryside and we have specific orders for those things." He said, "That doesn't enter into the question. Put Goodyear fan belts up there and that is the only kind."

[fol. 2234] Q. And did you put Goodyear fan belts up there?

A. I did.

Q. Did you ever have any trouble relative to battery cables?

A. Yes, sir, the same trouble relative to battery cables.

Q. Who made the complaint to you on that?

A. Mr. Kaiser did that.

Q. What battery cables were you handling?

A. Well, I can't just exactly say the name of them right now. I bought them from a distributor there in town. I bought those because I couldn't get them from the Richfield distributor at that time.

Q. Can you tell us this, Mr. DeLonge: Relative to these fan belts and battery cables were you able to purchase them at any better profit to yourself other than from Mr. Kaiser?

A. Yes.

Q. And was that one reason why you had purchased these?

A. That is one reason.

Q. Now, will you tell us relative to filters? Did you have any difficulties on filters?

A. Yes. I had some Fram filters in the stockroom and they were disapproved of by Mr. Kaiser.

Q. Were you able to purchase them any cheaper than you [fol. 2235] were the Richfield Purolator filters?

A. A cent or two, maybe, not very much.

Q. Why were you carrying Fram filters?

A. Because people would come in with a car with Fram units in them, and lots of people are as finicky about their cars as we are about our eating. They want a Fram filter in that unit and that is all they want.

Q. Was there any objection made to you by any Richfield representative?

A. Yes, sir.

Q. Who?

A. Mr. Kaiser.

Q. What did he say?

A. He said, "Purolator filters have replacement units for all Fram units, and you will sell the customer Purolator filters, not Fram filters, remember that."

Q. And did you continue thereafter, or did you purchase Purolator filters?

A. Yes, I did.

Q. Relative to spark plugs, what happened relative to spark plugs you were handling?

A. Well, I was given to thoroughly understand that I would have to sell Champion spark plugs and I would buy those spark plugs from Mr. Kaiser, the local distributor, only.

Q. Had you bought Champion spark plugs anywhere else? [fol. 2236] A. Yes.

Q. Where?

A. I had bought them from Olympia Auto Supply and Spoon's Auto Products.

Q. Why had you purchased those spark plugs other than from Mr. Kaiser?

A. Well, the reason was I could get them a little bit cheaper by buying them in lots.

Q. How often would these men come around to inspect your station while you were there?

A. Oh, there was somebody in there every month.

Q. You stated you were open 24 hours a day. Was that of your own volition?

A. No, sir.

Q. Because you wanted to?

A. No, sir.

Q. Who told you you had to stay open 24 hours a day?

A. Mr. Kaiser and Mr. Dinsmore.

Q. What did you tell them after you had been operating some time?

A. I told them that the night operation was awful costly to me. I was losing money on it.

Q. Did you make a check of your operation between midnight and 7:00 a. m.?

A. I did.

[fol. 2237] Q. What was the result of that check?

A. Well, the result of it was that I was not making enough money in that operation to pay the attendant and the lights and the water and other expenses that were incurred by that operation.

Q. Did you protest to Richfield?

A. Very vigorously.

Q. To whom?

A. Mr. Kaiser and Mr. Dinsmore.

Q. And what did they say?

A. Well, Mr. Kaiser was the first one I talked to. And he said, "This station has always been open 24 hours a day and you will keep it open 24 hours a day." I said, "Well, it is not profitable. I am losing money on that shift and I would like to close it from about 12:00 o'clock at night until about 6:30 in the morning." And he said, "Definitely no."

Q. Did you continue it then to keep it open?

A. Open.

Q. After you had been in the station, say, around six or eight months, will you tell us about what the average gallonage per month was that you were pumping?

A. Well, after I had been there about eight months I was taking about 25,000 gallons.

Q. Did that ever increase?

[fol. 2238] A. Yes, sir.

Q. What was your top figure, as nearly as you can recall?

A. Well, I can't give it exact, but I would say around 32,000.

Q. When did you leave that station?

A. On September the 29th. I think that is the exact date. I am not sure. 1947.

Q. Just to refresh your recollection, in approximately a year after you had been in it?

A. That is right.

Q. How did you happen to leave this station, Mr. DeLong?

A. Well, I was spending too many hours there. I was working too hard.

Q. Yes.

A. Help was almost impossible to get, that is, good, reliable help, and by not being able to close the station during that night period I was just getting worn out. Also, my rentals had been increased and it was impossible for me to carry on there, to the wefare of myself and my business.

Q. Did you make any attempts to sell this business to anyone?

A. Yes, sir.

Q. And did you obtain a purchaser who was satisfactory [fol. 2239] to you?

A. Yes, sir.

Q. And who was that purchaser?

A. A Mr. DeHoag and Mr. Baker. There were two of them.

Q. And did you put a price upon your business?

A. Yes, sir.

Q. And what was that price?

A. The exact——

Mr. Paradise: I submit, if the court please, that this is immaterial and is also hearsay insofar as this defendant is concerned.

Mr. Hall: It is preliminary as to what I am going to bring up as to Richfield's participation in this, your Honor.

The Court: All right.

A. I told him the price of the station would be just exactly the cost of the inventory.

By Mr. Hall:

Q. Was that agreeable to him?

A. That was agreeable.

Q. Then what did you tell him?

A. We took the inventory and——

Q. No, but I mean relative to Richfield. What did you tell either Mr. Baker or Mr. DeHoag?

A. I told them that they would have to see Mr. Kisor after the inventory was taken.

Q. Do you know what happened between Mr. Kisor and [fol. 2240] either Mr. Baker or Mr. DeHoag?

A. The first time Mr. DeHoag went down to see Mr. Kisor he couldn't see him.

Q. Were you present at any of the conversations between them?

A. No, sir.

Q. Did Mr. Kisor or any other Richfield representative ever speak to you about this proposed sale to Mr. DeHoag and Mr. Baker?

A. Yes, sir.

Q. And who was it?

A. That was Mr. Dinsmore and Mr. Knudsen.

Q. And about when?

A. That was the day that I was put out.

Q. What did they say?

A. Mr. DeHoag and Mr. Baker stood with their check made out for the full amount of the inventory and told Mr. Dinsmore that they were ready to purchase the property, and Mr. Dinsmore turned around and told them it was no use and they could get out.

Q. Do you remember what the amount of that check was?

A. It was $5,476, I think. I won't swear to that exact figure, but that was pretty close.

Q. And did Mr. Baker and Mr. DeHoag get out?

A. Well, they didn't immediately. They stood around [fol. 2241] Q. Was there any further conversation?

A. Yes, sir.

Q. What was it?

A. They said that it was an ideal station and I had a good business and that they would sure like to have it.

And they were saying this to Richfield representatives in general there. And Mr. Kisor informed Mr. DeHoag then that the prospective purchaser that they had had been promised my station eight months prior to that time, even before I thought anything of selling it.

Mr. Paradise: He told that to them in your presence?
The Witness: Yes, sir, he told them that in my presence.

By Mr. Hall:

Q. And then what followed?
A. Well, this Mr. Winters——
Q. Who is Mr. Winters?
A. Mr. Winters is the Richfield sales person.
Q. First, did you have any further conversation with either Kisor or Dinsmore relative to this man Winters?
A. Yes, sir.
Q. After you couldn't sell it to DeHoag and Baker?
A. Yes, sir. Mr. Kisor—well, I had better put it this way: One night about 9:00 o'clock a man came into the station and said, "I understand you want to sell this place." And I said, "Yes, I would like to sell it." And he looked around and he said, "You got a pretty nice place here." He [fol. 2242] said, "Mr. Kisor sent me down to buy it." And I said, "Well, that is all right if you have got the money. Your money is as good as anyone's."
Q. May I ask now, was this after the Baker and DeHoag deal had fallen through?
A. No, sir. This was before the Baker and DeHoag conversation. I said, "If you have the money, I guess your money is as good as anyone's." He said, "What do you want for it?" I said, "Well, I want just exactly the inventory price of it." "Ah," he said, "I won't have to pay that, I will tell you that." I had told him what the inventory price was at that time because I had taken the inventory. And then was the time he gave me the laugh and said he could buy it a lot cheaper than that. And I said, "Well, Mister, if you came here to insult me, get out on the street and stay out of here."
Q. He got out?
A. He got out, but, he said, "I will be back tomorrow morning about 8:00 o'clock."

Mr. Paradise: Can we have the time of this conversation, please?

The Witness: At 9:00 o'clock in the evening, sir.

Mr. Paradise: No. I mean the date.

Mr. Hall: About a week before. It was about the second or third week in October, he said.

[fol. 2243] The Witness: He was back at 8:00 o'clock in the morning, all right, but I had——

By Mr. Hall:

Q. Was he accompanied by anyone?

A. Yes, sir.

Q. Who?

A. He had Mr. Dinsmore and Mr. Knudsen with him.

Q. Will you tell us what happened then?

A. Mr. Winters walked on in the station and Mr. Dinsmore and Mr. Knudsen stopped on the edge of the premises and called me over. And they put their arm around my back and said, "Well, Bob, I guess you will be able to sell all right." And I said, "Well, it is all right with me if everything goes according to the way it should be." And they said, "Well, now, understand we are down here as representatives of the Richfield Oil Corporation and we are just here to facilitate this sale. We want to see that everybody is satisfied on both sides and we are here as much for your protection as we are for anyone else's." And I remarked then that there was no one ever took me into the station when I went there and paid $6,000 for it. Well, of course, those times were different then. Now, this is the way we are going to do it. Well, I said, "That is all right. Let's go if the man wants to buy it." So then we went on in the station.

Q. Then what followed?

A. Well, they immediately proceeded to go over my [fol. 2244] stock on the shelves and the man—and Mr. Winters and Mr. Dinsmore and Mr. Knudsen and myself and the bookkeeper were all in this, in this stockroom where the bookkeeper's desk was there, anyway, and Mr. Winters looked at some items there. Well, he said, "I will take those Purolators and I will take the spark plugs and I will take the headlight lenses, and I will take vari-

ous other items." And I said, "Wait a minute, here. What is going on now?" I said, "If you want this property, you will take it as is. Now, that is the only way I will sell it. I have got it for sale just that way." And Mr. Dinsmore turned around to me and said, "Now, look. This man doesn't have to buy a single thing in this place except what is Richfield approved." Well, I said,—I made a remark then that this was the United States, not Russia. I said, "I am going to call my lawyer." So I said, "Everything is going to stand still until my lawyer gets here."

[fol. 2245] Q. Now, was it at this time that they offered you a termination agreement for you to sign?

A. A few hours later.

Q. A few hours later?

A. Yes, sir.

Q. You called your lawyer then?

A. Yes, sir.

Q. Did he come down?

A. Yes, sir, he came down.

Q. Did you or did you not agree to sell this place to Winters?

A. No, sir, I never agreed to sell it to him.

Q. Did Richfield officials offer you a termination agreement to sign?

A. Yes, sir, they did.

Mr. Hall: Will you mark this for identification, please, Mr. Childress?

The Clerk: Government's Exhibit 20, marked for identification.

(The document referred to was marked Plaintiff's Exhibit 20, for identification.)

By Mr. Hall:

Q. I will hand you Government's Exhibit 20, and ask you if that is the termination agreement which they submitted to you and asked you to sign.

A. That is.

[fol. 2246] Mr. Hall: I will offer Government's Exhibit 20 in evidence.

Mr. Paradise: No objection.

Mr. Hall: Government's Exhibit 20 is offered in evidence, your Honor.

The Clerk: Is it admitted, your Honor?

The Court: It may be received.

The Clerk: Exhibit 20 in evidence.

(The document referred to, heretofore marked Plaintiff's Exhibit 20, for identification, was received in evidence.)

By Mr. Hall:

Q. Did you show this to your attorney?

A. Yes, sir, I did.

Q. What did he tell you?

A. He said, "I'll take care of that."

Mr. Paradise: I will object to that.

By Mr. Hall:

Q. Was this in the presence of Mr. Dinsmore and Mr. Kaiser?

A. Yes, sir.

Q. What did he tell you?

A. He said, "I'll take care of that," and he put it in his pocket.

Q. Was it upon his advice that you refused to sign it?

A. Yes, sir.

Q. Then what happened?

[fol. 2247] A. Mr. Dinsmore just laughed and said, "Well, we'll take care of it anyway." So Mr.—the lawyer, and Mr. Dinsmore, and Mr. Knudsen went into conference, which I didn't hear, they went off to one side, and went into conference.

Q. Then what was told to you about when you should get out of there by any Richfield representative? First, name the representative.

A. Mr. Dinsmore.

Q. And when was this?

A. About a half hour after this termination lease was offered.

Q. What did he say to you?

A. He said, "Be out of here by 8:00 o'clock in the morning, and take all that trash with you," indicating my stock.

Q. Was that stock the stock which they had refused to purchase?

A. That was.

Q. Was that stock that you used regularly in your business,——

A. Yes, sir.

Q. —and sold?

A. Yes, sir.

Q. Was there anything further said immediately at that [fol. 2248] time about your getting out?

A. Mr. Kaiser in my presence, that is, so I could hear it, told Mr. Dinsmore, "Let's get him out of here at midnight. Then the customers won't know we are kicking him out."

Q. Did you get out of the station?

A. I got out of the station at 8:00 o'clock in the morning. Mr. Winters refused to take the station over at midnight.

Q. And what happened with the stock that was in there?

A. We loaded it into boxes and put it on a truck, and I had to haul it home, have it hauled home.

Mr. Hall: Pardon me just a moment.

The Court: How did you finally adjust the inventory?

The Witness: Well, sir, I took the stuff home and put it in my garage, and tried to sell it back to my creditors for whatever I could get for it, to satisfy my creditors.

The Court: How about the portion you left in there?

The Witness: I didn't get paid for it for two months. The incoming man bought it, but I didn't get paid for two months.

The Court: What did it amount to?

The Witness: About $1300, sir. The total inventory was 5,000, sir.

[fol. 2249] Mr. Hall: I was going to ask that, your Honor. Thank you very much.

The Court: You had a hiatus there, so I brought it out. You created a vacuum. That is the expression they use now. You created a vacuum, and I walked into it.

Mr. Hall: Thank you very much. Your witness.

The Court: Except mine isn't so very ominous, I think.
Mr. Hall: I am very grateful, your Honor.

Cross-examination.

By Mr. Paradise:

Q. Mr. DeLonge, first, I would like to ask you about this matter of the rental increase that you mentioned. What was your rent at the time you first occupied the station, do you know?

A. Yes, sir, one cent a gallon for the first 20,000, and half a cent over 20,000. $200 flat and a gallonage rental.

Q. I am not sure that I heard you correctly. Would you speak a little louder, please?

A. $200 flat, and gallonage over rental.

Q. That was at the time you first went in?

A. Yes, sir.

Q. $200 flat, with a half cent over 20,000 gallons?

A. That's right, sir.

[fol. 2250] Q. I will show you this lease, Mr. DeLonge, and ask you if, by examining it, you will indicate whether that was not incorrect.

A. (Examining document) No, sir. That isn't the rental we paid. This calls for $100, and a half cent.

Q. Yes, sir.

A. And we paid $200 and a half cent rental, sir.

Q. Isn't it correct, Mr. DeLonge, that you paid $100 per month, which represents one cent per gallon on the first 10,000 gallons, that you paid no rent whatsoever on the next 10,000 gallons, and you paid a half a cent a gallon in excess of 20,000 gallons?

A. Not to my recollection, sir. Of course, the bookkeeper took care of most of that part, but it was my recollection it was two cents a gallon up to 20,000 gallons. Wait a minute. You are right. I am very sorry. I was mixed up there.

The Court: Well, you paid whatever that worked out, in figures?

The Witness: Yes, sir, plus an extra $100 a month, sir.

By Mr. Paradise:

Q. Plus an extra $100 a month?

A. Yes, sir, to the local distributor.

Q. You paid him directly?

A. Yes, sir.

[fol. 2251] Q. Under an arrangement you made with Richfield?

A. No, sir, under an arrangement I had to make with him.

Q. That is nothing Richfield ever heard about, is it?

A. I don't know whether they heard about it, but I know he was a Richfield representative.

Q. Well, you made this payment to him personally?

A. Yes, sir.

Q. For his own account?

A. Yes, sir.

The Court: What was that for?

The Witness: This was for basic rental, sir. I will take that back. That was an additional $100 I had to pay him for the privilege of renting it.

The Court: It was a little overriding royalty?

The Witness: That's right.

The Court: You would call that graft, if he was in public office, unless you got something for it.

By Mr. Paradise:

Q. What was this man's name?

A. Mr. Orville Kaiser.

The Court: How did you pay it,—by check?

The Witness: Yes, sir.

By Mr. Paradise:

Q. How did this come about?

A. The second month I was in there, Mr. Kaiser came [fol. 2252] down and said, "Now, it has been customary for the occupants of this station to pay the local distributor $100 a month rent."

And I said, "My lease doesn't say anything about it."

He said, "Now, Bob, you've got the place," and by that time I had it going nicely,—"you've got this place, and

you make it. It is all right, and if you want to stay here, of course, that is the way it works."

And that's the way it had to work.

Q. You understood that Mr. Kaiser was a distributor?

A. Yes, sir.

Q. A commission agent?

A. Well, sir, I don't know what his arrangement was with Richfield.

Q. You knew he was not a salaried employee of Richfield?

A. I didn't know that, no, sir. I didn't know what his arrangement was.

The Court: But you got your supplies from him, the TBA?

The Witness: The TBA, yes, sir.

By Mr. Paradise:

Q. Now, there were other Richfield people whom you mentioned, Mr. Knudsen, and Mr. Dinsmore——

A. And Mr. Buck.

Q. Did you ever talk to any other Richfield people besides [fol. 2253] those three?

A. No, sir, I never did.

Q. Did you ever mention to Mr. Knudsen, or Mr. Buck, or Mr. Dinsmore, that you were required by Mr. Kaiser to pay to Mr. Kaiser an additional $100 a month?

A. Not to my knowledge, sir.

Q. Why didn't you?

A. Because I—as soon as I mentioned to Mr. Dinsmore, I would be out of business.

Q. Now, you mentioned that your rental was increased during the term of your lease.

A. It was, yes, sir.

Q. This rental amendment dated July 29, 1947, changes the rental from $100 a month with one-half cent over 20,000 gallons, to $50 a month with an additional rental of one cent for each gallon over 5,000 gallons; is that correct?

A. That's correct.

Q. During this time you occupied this station, even after this rental amendment was signed, did you ever pay more than one cent per gallon per month to Richfield?

A. No, sir.

Q. Now, as I understood it, your first discussion of going into this station was with this same Mr. Kisor?

A. That's right, sir.

Q. To whom you subsequently paid the $100 a month?

[fol. 2254] A. That's right.

Q. And you told him that you wanted a station?

A. That's right, sir.

Q. And he told you that this particular station is going to be available?

A. That's right, sir.

Q. And you went out, and it was at his suggestion that you went to see, I think you mentioned, the boys that operated it?

A. Yes, sir.

Q. Were those the Million Brothers?

A. No, sir; that was one Million brother, and Mr. Larson.

Q. I see. It was at that time that they wanted to make a sales price of $6,000; is that right?

A. That's right.

Q. What did that 6,000 represent?

A. Very little, sir. There was hardly anything in the place. The equipment, the old hoist was broken down, and there were two Walker floor jack hoists, and one of them was broken and discarded. And there was very little stock on the shelves; just what they would have for day-to-day business.

Q. This broken hoist you are talking about, is that the same hoist you mentioned before?

[fol. 2255] A. No, sir. I am talking about a floor jack hoist.

Q. You are not talking now about the hoist you were discussing with Mr. Hall during his examination?

A. No, sir. It was a floor jack.

Q. Just a jack?

A. Yes, sir.

Q. A movable item?

A. That's right.

Q. Did the $6,000 cover any accessories?

A. No, sir, there were very few accessories there. All

together, sir, if I might say so, there was about $200 worth of stock in accessories, sir.

Q. Then is it your understanding that the $6,000 represented some intangible value, in the nature of good will?

A. That's right, sir.

Q. Now, what was the other man's name? Mr. Million and——

A. And Mr. Larson.

Q. Mr. Million and Mr. Larson?

A. Yes, sir.

Q. After Mr. Million and Mr. Larson talked to you, you had another conversation with Mr. Kisor?

A. Yes, sir.

Q. And what did Mr. Kisor tell you?

[fol. 2256] A. Well, he said, "That's an awful price, but," he said, "if you want to wait a week I will let you in there, and it won't cost you anything."

And I said, "What do you mean by that?"

"Well," he said, "I have ways and means of taking care of those guys down there. I'm gettting tired of them anyway, and"—do you want me to finish?

The Court: Go ahead.

By Mr. Paradise:

Q. Give me the full conversation.

A. I said, "I don't want that kind of business. I don't want to be a part of that kind of business. I want to go in that station with the good will of the men that went out of it and the good will of the customers that come in, and if I go in there, I'll pay their price and make my own business."

Q. Didn't Mr. Kisor tell you at the same time and on this same occasion that the Richfield Oid Corporation does not permit any good will value on the transfer of a station?

A. No, sir.

Q. And that the operator is only in there on a 24-hour basis to run the station for Richfield?

A. No, sir.

Q. Didn't he tell you that?

A. No.

Q. Didn't he tell you that Richfield did not permit an

[fol. 2257] operator, when he is leaving the station, to charge any item for so-called "Blue Sky," which is the trade expression used for that?

A. No, sir, he didn't tell me that.

Q. And didn't he tell you an incoming operator is not permitted to have any "Blue Sky"?

A. No, sir, he didn't tell me that.

Q. But, at any rate, he told you not to pay these people $6,000, and that if you would wait a week, you could have it for nothing?

A. That's right.

Q. Now, then, you bought a partnership interest with Mr. Million?

A. That's right.

Q. Notwithstanding that Mr. Kisor told you not to pay anything for it?

A. That's right.

Q. And then you operated the station in partnership with Mr. Million for a month and a half before Mr. Million departed?

A. That's right.

Q. Did you buy Mr. Million out?

A. Yes, sir.

Q. That was a dissolution of your partnership?

A. Yes, sir.

[fol. 2258] Q. It was at that time that this 542 form sublease was entered into with you personally?

A. About that time, sir. May I make a statement there, that I asked Mr. Kisor for a copy of that lease,——

Q. Yes.

A. —and he told me that there was not one available. I didn't have any opportunity to see the lease before I went into the place, or to read a copy of it.

Q. No copy has ever been delivered to you?

A. No. A copy of the lease with me, but I wanted to see what the lease looked like before I went in, neither Mr. Kisor nor Mr. Million would show me the copy of the lease that they had.

Q. What date did you go into this station?

A. On September 10, 1946.

Q. You didn't see this lease before you moved in?

A. No, I didn't, sir.

Q. How much did you pay Mr. Larson for his partnership interest, when you bought in with Mr. Million?

A. $3,000 cash.

Q. Did you make any investigation of the assets of that partnership?

A. I made an investigation of the—of his actual investment, not the assets. The assets were visible right there.

[fol. 2259] Q. You saw what the assets were?

A. Yes, sir.

Q. Now, at the time you spent this money and bought into this partnership, did you ask either Mr. Million or Mr. Larson the terms of their lease with the Richfield Oil Corporation?

A. Yes, sir, I did.

Q. Did you see that lease?

A. No, sir, I didn't.

Q. Did you ask for it?

A. Yes, sir, several times.

Q. Why didn't they show it to you?

A. They said they didn't have one.

Q. They didn't have one to show you?

A. But they were lying. I found that out later.

Q. They did have one?

A. Yes, sir. Then I asked Mr. Kisor for a copy of the lease, and he said he didn't have one.

Q. Do you now know that this form of lease, and when I say "this form," I mean the fact that this lease contains a provision that either you or Richfield Oil Corporation could terminate it on 24 hours' notice, that that same clause was also contained in the lease between Richfield and Mr. Million and Mr. Larson?

A. I understand that now.

[fol. 2260] Q. Yes. Now, at the time you moved into the station, as I understand it, Mr. Kisor told you that you could operate this station—you could remain in the station so long as you operated it for the benefit of Richfield?

A. That's correct.

Q. Is that correct?

A. That is correct.

Q. Was there any enlargement on that?

A. Well, Mr. Buck and Mr. Knudsen, or, Mr. Dinsmore, both enlarged upon it to the extent that they wanted me to take over another station, in addition to this one, up on——

Q. I am talking about the manner of operation, Mr. DeLonge.

A. I didn't quite get your question.

Q. That it be operated for the benefit of Richfield?

A. I must have—well, the best way I can say is that all Richfield representatives, every time they came in, were so complimentary about this operation, that that's all I ever heard from them.

Q. Did any of these Richfield representatives tell you that your purchase of Richfield non-approved accessories was not to the benefit of Richfield?

A. I don't quite get the way you put that question, sir.

Q. Well, put it this way——

[fol. 2261] The Court: In telling you not to buy, did they tell you why,—why they didn't want you to buy them?

The Witness: They told me Richfield controlled or had plenty of this stuff to sell, and I am to buy it from Richfield,—Richfield alone. That was told to me.

Mr. Hall: Your Honor please, may I ask that the date of this conversation be set by counsel?

The Court: Well, there were several conversations about it?

The Witness: Yes.

Mr. Hall: I assumed it was after he got into the station.

The Witness: It was, sir. It was about two months after I got into the station.

By Mr. Paradise:

Q. But you understood at the time, before you went in, in your conversation with Mr. Kisor that your tenure in that station was subject to your operation of the thing for Richfield's benefit?

A. That's right, sir.

Q. Were you told to wear a uniform?

A. Yes, sir.

Q. Did you wear them?

A. We certainly did.

Q. The merchandiser,—by the way, Mr. Knudsen and Mr. Dinsmore were both merchandisers, were they not?

[fol. 2262] A. Yes, sir.

Q. They came around at least once a month to your station to examine it?

A. About that.

Q. And they brought to you a form called "Survey of Service Station Operation," did they not?

A. No, sir, I never saw one.

The Court: How long did you stay all together?

The Witness: Almost a year, sir, to the day; a few days over.

The Court: Can you produce those checks if a question should arise as to whether you paid those $100 amounts to Mr.——

The Witness: Kisor?

The Court: —to Mr. Kisor? Can you produce those checks?

The Witness: I think I can, sir. I think they are all saved. I don't want to make an actual statement.

The Court: No. I just wanted to ask that, so that if he is a witness and denies it and it is necessary to have a check,—a check tells a story.

The Witness: I think I have them, sir.

The Court: It is interesting to know what was being done in this particular case.

Mr. Paradise: I might say it is also exceedingly inter-

[fol. 2263] esting to the defendant.

The Court: That demonstrates what I have said many times, that these businessmen will brag about business ethics, but if any man in public office were to do any of these things, he would be in jail, and what they consider as honest rent would be considered graft in the case of a man in public office. And yet I suppose a businessman like that will get up in these Rotary Club meetings and make speeches about a man who is in public office. Not that that is new. It is exactly in the pattern which is developed many a time in court cases. But it is interesting to see what these men do. A man gets him into a station, with which he has

nothing to do, and then he gets a rent graft on the side of $100 a month for allowing him to stay there.

The Witness: May I state there is almost a verification of that fact in Mr. Hill's brief, a wire-recorded message by my lawyer of a telephone conversation that Mr. Kisor had with me, beseeching me to keep my personal business with him between ourselves.

The Court: That is all right. W don't need to use that. I just wanted to know if that was there in case he should be a witness later on. Go ahead.

By Mr. Paradise:

Q. Did Mr. Knudsen——

The Court: Of course, Richfield does not have to call him. [fol. 2264] Mr. Paradise: I might mention to the court that this witness has testified that Richfield had nothing to do with this matter of $100.

The Witness: No, nothing whatever, I don't think.

The Court: I am not holding you responsible.

The Witness: Mr. Kisor is not with them.

The Court: I am not holding you responsible for what he does, but it helps create, to use a common expression, a picture of some of these details. That is all. Besides that I may say I am not interested in the ethics with which any of your men ran the business. You see, I am not sitting in judgment on that. I am interested in only one thing, and that is whether there is a violation here of the anti-trust law. As to other matters, they are beyond my control. I am not a keeper of the conscience of the various distributors or merchandisers that this or any other company might have in its employ. I have worries enough without having to worry about that.

Mr. Paradise: And, your Honor, the Richfield management will be very interested as to the $100 that the witness paid to Mr. Kisor, and we also want to say that Mr. Kisor is not now an employee of the Richfield Oil Corporation.

The Court: All right.

By Mr. Paradise:

Q. Mr. DeLonge, I will show you Defendant's Exhibit C,——

[fol. 2265] The Court: I will make a statement off the record.

(Statement off the record.)

The Court: This is a friendly law suit, gentlemen, and I like occasionally to get away from it and make some general observations on the state of the country.

[fol. 2266] By Mr. Paradise:

Q. Mr. DeLonge, I have forgotten now whether I have asked you whether you have seen this form.

A. No, you haven't yet. I haven't seen it. Oh, you had asked me if I had seen one. No, sir, I have never seen one.

Q. You have not seen one?

A. No, sir.

Q. Thank you. On how many occasions, Mr. DeLonge, did these merchandisers, Mr. Dinsmore or Mr. Knudsen or the TBA distributor—Mr. Kisor was both TBA distributor and sales commission agent, wasn't he?

A. Yes, that is right.

Q. On how many occasions did Mr. Dinsmore or Mr. Knudsen or Mr. Kisor complain to you about your handling non-authorized TBA?

A. Well, the total number probably would be about six or seven times.

Q. And did those occasions continue throughout this period of years that you were in the station?

A. Yes, sir, every time they found anything that didn't——

Q. How soon was the first one after you moved in?

A. The first?

Q. The first, yes.

[fol. 2267] A. The second month.

Q. The second month?

A. Yes.

Q. And did you ever handle non-Richfield lubricating oils or greases in the station?

A. A little Quaker State and Pennzoil and MacMillan Ring-Free is all, just maybe about four cans at a time of each.

Q. On how many occasions did either of these three gentlemen, Mr. Dinsmore or Mr. Knudsen or Mr. Kisor, complain about that?

A. Mr. Dinsmore once and Mr. Kisor, not long after, about the same incident.

Q. There were only two complaints about that?

A. That is right.

Q. How soon did those occur after you commenced operating this station?

A. Well, almost immediately after Mr. Dinsmore began to work for the company, or at least that I knew he was, and I can't say. I would say it was about the third month after I was in the station. That was the first time I ever saw Mr. Dinsmore.

Q. Notwithstanding these complaints, you continued to buy this stuff and to handle it, is that correct?

A. Yes, sir, I did.

[fol. 2268] Q. You continued to buy Quaker State and Pennzoil products?

A. Yes, sir.

Q. And MacMillan oil?

A. Yes, sir.

Q. You continued to purchase non-approved Richfield TBA? I mean TBA not approved by Richfield for credit card purposes?

A. That is right, sir.

Q. You continued to buy fan belts that were not Goodyear fan belts?

A. No, sir.

Q. What were the non-approved items that you continued to purchase after they complained about it?

A. Just oil.

Q. What?

A. Just a little bit of oil.

Q. Didn't you continue handling non-approved batteries?

A. Non-approved batteries?

Q. Yes.

A. No, sir, not after I could buy Richfield batteries from Mr. Kisor.

Q. Well, I thought in response to Mr. Hall's questions you testified that after Mr. Kisor or Mr. Dinsmore or Mr. Knudsen complained about this unauthorized TBA that you [fol. 2269] still continued to purchase it.

A. I think you will find that that just relates to oil.

Q. Just to oil?

A. Yes, sir.

Q. You completely discontinued buying unapproved merchandise?

A. That is right, sir. And batteries, sir, if I might observe, it was impossible to supply me with batteries and I was given authorization by Mr. Kisor to go out and buy batteries wherever I could buy them.

Q. This incident about the hoist that broke, when did that break, how soon after you moved into the station?

A. Right after the first of the year, sir.

Q. When did you move in?

A. I moved in in September of 1947—in 1946, rather, and my recollection is it was right after the first of the year that it broke down.

Q. And, as I understood your statement, you complained about this to Mr. Kisor?

A. Yes, sir.

Q. And what was his statement to you?

A. He said that he would go down and see it.

Q. And he did come down and see it?

A. About five hours, six hours later, yes, sir.

Q. Will you describe what this hoist was?

[fol. 2270] A. Yes, sir.

Q. What it consists of, describe it simply.

A. It consists of two long runways that are slightly raised from the ground, and there is an electric motor with a framework over it, and there is an electric motor on the top that winds up cables on a shaft on each one that when the electric motor is turned on, the car is being lifted into the air on these two flat runways, solely on the strength of these cables and various gears that run shafts to pull the cables. And these were worn so badly that they were slipping. You put a car on and start to raise it up and

the gears would slip like that, and the car would jerk. And I had complained about the condition of it before it broke.

Q. Complained to whom?

A. Mr. Kisor.

Q. What did he tell you at that time?

A. Oh, he said, "They have always used it that way," he said, "and there is nothing ever happened to it yet," which I found out wasn't the truth.

Q. After the mechanism broke and you called Mr. Kisor and he came down to examine it what did he tell you? What was your conversation with him?

A. Well, he said, "It looks pretty bad, doesn't it, Bob?" And I said, "It sure does." All these ropes, shafts and everything were just bent double like that, and even the [fol. 2271] floor, the runways on the floor in falling had struck the floor so hard, with the car on them, that it had buckled them and bent them. The castings were all broken. The motor housing was broken. The thing was just a total wreck. Both of the front-end cables were broken. Well, he said, "It looks pretty bad." He said, "I will get a man to come down here and give us a bid on fixing it up."

The Court: Had it just given out, worn out?

The Witness: Yes, sir. It had been there over 14 years, sir. It had lived its natural life.

The Court: You push a button and it moves up itself?

The Witness: Yes.

The Court: They thought evidently it would last forever.

The Witness: Yes, sir.

By Mr. Paradise:

Q. Did Mr. Kisor indicate to you if he thought it could be repaired?

A. Yes, he did.

Q. What did you tell him?

A. I told him that it couldn't be repaired and used with safety, and that I would not trust a man under it or somebody else's car on it.

Q. Did Mr. Kisor tell you anything about Richfield's obligation with respect to the repair of that?

A. Yes, sir.

Q. What was his statement in that regard?

[fol. 2272] A. He said that he would have to talk with the Richfield representative, district representative about Richfield doing anything about it. He didn't know whether Richfield would do anything about it or not.

The Court: Didn't you say something on direct examination that somebody told you it was not their obligation but it was the owner's?

The Witness: Yes, sir.

The Court: Who told you that?

The Witness: The Richfield representative.

The Court: Oh, after?

The Witness: Yes, sir. I was just coming to that.

The Court: You are coming to that?

The Witness: Yes, sir.

The Court: I knew you had told us something about it. I was wondering if this was a conversation you had already told us about. All right.

By Mr. Paradise:

Q. Isn't it true, Mr. DeLonge, that you would not permit Mr. Kisor to come in and attempt to repair this hoist?

A. No, it is not true that I wouldn't permit him to come in and attempt to repair it. It is true that I would not use it after it was repaired the way they wanted to do it.

Q. It is not true that you told him that you would not permit it to be repaired?

[fol. 2273] A. No, sir, it is not true.

Q. What did you tell him?

A. I told him that I would not use that hoist. I said, "Don't repair that hoist for my use in business because I won't trust a man under it nor a car on it. It is worn out." But I never stopped him from repairing it.

The Court: Well, what was your idea? You did not think that it was safe?

The Witness: No, sir, it was not safe, your Honor. It was not only worn out in the parts that had broken, it was worn out over itself entirely.

The Court: Did they ultimately replace it?

The Witness: No, they did not.

The Court: Supposing they replaced with new parts as they were in the condition in which they were in the beginning, would you have used it?

The Witness: The thing was like a one-horse shay, your Honor. It had fallen all apart at one time.

The Court: Did you ever get under that to a car to do the greasing yourself?

The Witness: I had been, yes, sir, like this, way off to one side like I was getting close to a bee's nest or something like that.

The Court: All right.

By Mr. Paradise:

[fol. 2274] Q. So you installed another hoist there yourself?

A. That is right, I did, sir.

Q. What happened to that hoist at the time you moved out?

A. It is still there, sir.

Q. Did you sell it?

A. No, sir.

Q. Did you get paid nothing for it?

A. No, sir.

Q. Did you ask them to pay for it?

A. Yes, sir.

Q. What happened?

A. Well, they said, in the true course of events, due to the fact that I had only about half paid for the hoist myself—I was buying it on the installment plan and I had it about half paid for—they, and I am talking about Richfield representative, Mr. Dinsmore, now, kept stalling me, saying there would be some adjustment of it if Winters purchased that property.

Q. In what?

A. In the purchase of the property.

Q. You mean you are talking about your inventory of accessories?

A. Yes, sir.

Q. Or of the gasoline?

[fol. 2275] A. That it would be included in that.

Q. Yes.

A. But it never was.

The Court: Finally, what happened when you got through?

The Witness: I was forced into bankruptcy, sir, and as far as I know I am still charged with the hoist.

The Court: They paid the claim?

The Witness: No, sir, they never paid the claim.

The Court: Did they pay the balance that was due?

The Witness: I asked the man that sold it to me just two days before I left home, if that hoist was still charged to me, if it had ever been paid for, and he said it was not.

The Court: All right. Well, you see, you tried to be fair and it didn't work in that particular case.

The Witness: That is right, sir. I did.

The Court: I hope you do not become cynical.

The Witness: It is not going to do that.

The Court: You just got a bad deal, because you thought you were buying goodwill on a proposition where there was nothing to sell?

The Witness: I built a lot of goodwill, sir. I had a lot of friends there. I lived there for 25 years.

The Court: You did not capitalize it when you left.

The Witness: No, sir. I didn't get anything.

The Court: You should have taken a station across the [fol. 2276] way there like some of the other boys did.

The Witness: There was one open at that time and I had an opportunnity to, sir, but I was too sick that I was afraid I might runto into another Richfield.

The Court: All right.

By Mr. Paradise:

Q. When did you decide, Mr. DeLonge, to leave this station?

A. Well, I decided to leave—decided to leave the day Mr. Dinsmore said, "Get out of here by 8:00 o'clock in the morning."

Q. Let me see. You moved in on September 1st, 1946?

A. That is right.

Q. And when did you move out?

A. September 29th or 22nd. Either the 22nd or 29th, I won't say exact.

Q. September 22nd or 29th of 1947?

A. Approximately.

Q. You had no idea of moving before that time?

A. Well, I had an idea of moving, yes, but I hadn't decided on it.

Q. That is what I asked you before.

A. I had had an idea of moving probably about two months before that.

The Court: But you thought you could dispose of it advantageously?

[fol. 2277] The Witness: That is correct, sir.

The Court: And had a deal pending.

The Witness: That is right, sir.

By Mr. Paradise:

Q. Then you did decide some time before Mr. Dinsmore told you to move out?

A. Yes, that I would like to.

Q. How many months before did you first discuss with any Richfield representative the fact that you wanted to get out?

A. Not until the last month that I was there.

Q. Is it true, Mr. DeLonge, that in a period of something over two months before you moved out you told Mr. Knudsen that you wanted to sell your inventory of equipment, your inventory on your gasoline to somebody, and asked if he would assist you in finding someone who would buy it?

A. That is not the exact way of it, no.

Q. Will you tell me what the exact way was?

A. Mr. Knudsen wanted to know—we were talking, and I said, "well, if I could find a good buyer for this, I would sell it. It is getting too much for me." And he said, "Well——"

Q. Said what?

A. "It is getting too much for me." And he said, "Well, maybe I can find a buyer for you." And I said, "Well, if you find one that has got the money, that is fine and [fol. 2278] dandy."

Q. Didn't you ask him to help you?

A. No, sir, I didn't ask him to help me.

Q. Then you went out and tried to find someone, is that correct?

A. No, sir, I didn't go out and try to find someone. These people came in the station.

Q. Tell me about this Mr. Baker and Mr. DeHoag. You sought them out?

A. I did not seek them out. They sought me.

Q. They sought you out?

A. Yes, sir.

Q. They came to you?

A. Yes, sir.

Q. When did they come to you?

A. They came to me approximately—oh, maybe three weeks before I left the station, possibly a little bit before that.

Q. And these are the people who offered to pay you $5,476, I think you said?

A. That is right.

Q. For your inventory of gasoline, oil, and tires, batteries and accessories?

A. That is right, sir.

Q. Did that amount also include the amount that you had paid for the hoist?

[fol. 2279] A. No, sir, it did not.

Q. You did not ask them to pay for the hoist?

A. I didn't ask them to pay, because I figured that was my own obligation and I would pay for that out of the purchase price.

Q. But they were going to get the hoist, anyway, or you were going to take that hoist with you?

A. No, sir. It was in there solidly. They got the hoist.

Q. But you were not going to charge them for the hoist?

A. I figured that was part of the business.

Q. You were going to give them the hoist?

A. That is right.

Q. Did you tell Mr. Knudsen about this?

A. Oh——

The Court: Just a minute.

The Witness: I made a misstatement there and I want to

correct it. I am not here to lie. That hoist was included in the inventory as it was made up, the cost of that hoist was included in the inventory. In other words, I was not making them a present of the hoist, naturally. It was included in the inventory.

By Mr. Paradise:

Q. The inventory to whom?

A. The inventory to Mr. DeHoag, that was included.

The Court: How much did you pay for it?

The Witness: $395 installed, sir, and I had figured that [fol. 2280] I had used the hoist up approximately $100, and I think that that is what the inventory appraised it at.

The Court: So you included that?

The Witness: That is right.

By Mr. Paradise:

Q. Did you tell Mr. Knudsen about your prospective arrangement with Mr. Baker and Mr. DeHoag?

A. No, sir.

Q. You did not?

A. No, sir, not until the day they came in there.

Q. Well, I don't care when you told them.

A. Oh.

Q. What day was that when you did tell them?

A. The day that I was evicted.

Q. Prior to the day you were evicted did you tell Mr. Dinsmore about this prospective deal with Mr. Baker and DeHoag?

A. I am sure I did not. Mr. DeHoag did.

Q. How do you know that?

A. Because Mr. DeHoag came in and worked for me for two weeks prior to the purchase of the property and he was—that is, his contemplated purchase of the property. He wanted to find out just what the business was like.

Q. I see. Did Mr. DeHoag tell you to whom at Richfield he had talked?

A. No, sir, he did not.

[fol. 2281] Q. He just said he had talked to Richfield about the fact that he wanted to buy from you, is that correct?

A. That is correct, sir.

Q. Did you tell it to—I have forgotten whether I asked you about Mr. Dinsmore or whether it was Mr. Kisor. I want to find out if you told to either Mr. Kisor, Mr. Dinsmore or Mr. Knudsen, before the time of your eviction, of this prospective deal with Mr. Baker and Mr. DeHoag?

A. Yes, sir. I told Mr. Kisor.

Q. Mr. Kisor?

A. That is correct.

Q. How long ahead of this eviction did you tell Mr. Kisor?

A. Probably about a month.

Q. About a week?

A. About a month.

Q. What did you tell him?

A. I told him that I would like to sell the property to these two boys. They had given fine references. Now, I am telling you what I told him.

Q. Yes.

A. One of them had been working for me and he was certainly an excellent man. I would like to be able to sell my property to them, my equity in that business.

Q. And when you say "your property" you are referring to your merchandise?

[fol. 2282] A. That is right.

Q. Your gasoline, oil, tires, batteries and accessories, is that correct?

A. And that only, and that only.

Q. Pardon me?

A. And that only.

Q. Yes. Is it not a fact, Mr. DeLonge, at sometime prior to your eviction Mr. Knudsen told you that you could sell whatever you wanted to to Mr. Baker and Mr. DeHoag but that Richfield would not lease this property to Mr. Baker and Mr. DeHoag because those men had stated that they wanted to use that property as an automotive radiator shop?

A. No, sir, that was never told to me.

Q. That was not told to you?

A. No, sir, that was never told to me.

Q. And you are positive of that?

A. That is right. And that has been brought up. That is not the first time that question has been put to me.

Q. That was not told to you either on the day of the eviction nor at any prior time by Mr. Knudsen?

A. The Richfield Oil Corporation through its representatives never gave me a reason for refusing to sell that property to those men.

Q. You would say it is not true, then, that Mr. Knudsen told you that Richfield refused to lease this property to [fol. 2283] you, but that you had a perfect right to sell to Mr. Baker and Mr. DeHoag whatever you wanted to out of your inventory of gasoline and lubricating oils and accessories?

A. That statement——

Mr. Hall: If your Honor please, I submit that has already been answered.

The Court: It has already been answered. He has answered it once. I will sustain the objection. It is a summarization of the talk that I criticized Mr. Greer for last week.

Mr. Paradise: Forgive me, your Honor.

Q. Mr. Winters was the man who was the successor operator?

A. That is right, sir.

Q. And he purchased from you a part of your inventory?

A. That is right.

Q. He purchased from you all of your gasoline, did he not?

A. That is right.

Q. He purchased from you all of your Richfield lubricating oils and greases, did he not?

A. That is right.

Q. He purchased from you some of your tires, batteries and accessories?

A. That is right.

[fol. 2284] Q. Tires, batteries and accessories which he did not purchase from you were non-approved Richfield tires, batteries and accessories?

A. That is right.

Q. They were tires, batteries and accessories which you

had purchased in violation of the instructions given you by Mr. Kisor, Mr. Dinsmore and Mr. Knudsen?

A. That is right.

The Court: What made the great disparity between $5,400 and $1,300?

The Witness: The stock I had to take home and put in my garage, sir.

The Court: Incidentally, in that $5,400 inventory you did not put anything down for goodwill, did you?

The Witness: No, sir. I was not selling that at all.

The Court: And the prices at which you listed them were the wholesale prices to you?

The Witness: That is correct.

The Court: You were not making a profit on the inventory at all?

The Witness: That is correct.

The Court: How did you put in the hoist, for what it cost you?

The Witness: For what it cost me and what the labor cost me.

[fol. 2285] The Court: You must have carried, then, a tremendous lot of non-approved stock?

The Witness: I had a repair business, an automotive repair business in the place there.

The Court: Well, you must have had, because ordinarily there would not be such a great disparity between the approved and non-approved things. Evidently you were using mostly non-approved things in the repair shop.

The Witness: Richfield does not sell those things, and anything they don't sell is non-approved.

The Court: I see. All right.

By Mr. Paradise:

Q. You stated that Mr. Dinsmore had stated in the presence of you and Mr. Winters that Mr. Winters does not have to buy any of your stock of unapproved merchandise?

A. That is right, sir.

Q. Is that correct?

A. That is correct.

Q. Had any Richfield employee ever told you that it was going to assist you in the sale of unapproved merchandise?

A. No, sir, not prior to that moment.

Q. Pardon me?

A. Not prior to that moment.

Q. Or at that moment?

A. I say, not prior to that moment. They told me right then.

[fol. 2286] Q. Right then they told you that they would not?

A. Yes, sir.

Q. Nor prior to that moment had they ever told you that, had they?

A. They told me right at that moment that they were going to assist me in the sale of that property.

Q. I am afraid I do not understand your answer.

The Court: You called that "helping you"?

The Witness: Yes, sir.

The Court: After they turned you down and forbid you to take the check for $5,400 they were helping you out in a deal where you got $1,300, and you were told to take your junk out. That was their idea of helping you?

The Witness: That is correct.

The Court: They were good Boy Scouts.

The Witness: Like putting a man in a puddle of water and pushing him down in and then pulling him out.

The Court: All right.

By Mr. Paradise:

Q. Mr. DeLonge, sometime after you left this property you filed a lawsuit, did you not, against the Richfield Oil Corporation?

A. That is right.

Q. And you joined in that lawsuit as defendants Mr. Orville Kisor and the Ordel Oil Company and Mr. Knudsen and Mr. Dinsmore, all as defendants?

[fol. 2287] A. That is correct.

Q. And you sued for a recovery of the amount you thought you had lost by this sale between what you sold to Mr.

Winters and what you said you could have gotten from Mr.——

A. DeHoag.

Q. DeHoag. And is it not true that that action was tried before a jury in Olympia, Washington, and that the jury found that you were not entitled to anything?

A. No, sir, that is not a fact.

Mr. Hall: If your Honor please, I think inquiry into these matters that are strictly legal——

The Court: No, no. That goes to motive and bias. The pendency of litigation concerning a matter is always permissible.

Mr. Hall: I was just wondering about the files, that he should have the legal files and the court papers here.

The Court: No, I do not think so. The pendency of a lawsuit may go to bias and interest, etc. I think this witness feels he got a raw deal.

Mr. Paradise: I have no doubt of that, your Honor.

The Court: And I think he did get a raw deal. Whether he blamed the right persons or not I do not know, but it does not make any difference. I think on the whole deal he got a raw deal.

[fol. 2288] Mr. Paradise: If I may interject a comment at this time?

The Court: Yes.

Mr. Paradise: I think the incidents that we have been trying two weeks have been peculiarly isolated instances of raw deals, and that we are not trying an antitrust case.

The Court: Well, all right. As I say, we are not trying the ethics of the Richfield Oil Corporation or the ethics of some of the persons who distributed goods for them. We are interested in antitrust strictly.

Mr. Paradise: Thank you, your Honor.

The Court: I forgot who was the defendant in that lawsuit. Whom did you sue?

The Witness: Richfield Oil Corporation.

Mr. Hall: If your Honor please, if I may interrupt, I have the Supreme Court decision here of DeLonge versus Richfield Oil Corporation, et al., in the Supreme Court of Washington, numbered 31116, which is reported in 215 Pac. Rep. 215, the second series, at page 701.

The Court: I see.

Mr. Hall: And if your Honor desires to look at it, you may.

The Court: Oh, no. I am not interested. Who wrote the opinion? Maybe Judge Driver——

Mr. Hall: Mr. Justice Hamley.

The Court: Was Driver on the court at that time? What [fol. 2289] year was it? Who concurred?

Mr. Hall: March 3, 1950.

The Court: Oh, no, he was not on that court. Judge Driver was on the court of the Eastern District of Washington.

Mr. Hall: The judges who concurred in the case were Chief Justice Simpson, and Justices Robinson, Mallery, and Hill.

The Court: Well, that is all right.

Mr. Paradise: Would the court forgive me for just one moment?

The Court: Yes.

By Mr. Paradise:

Q. Mr. DeLonge, it is your understanding, is it not, that Richfield is not the owner of this land that we are talking about but is the lessee?

A. That is right.

Q. Do you know from whom Richfield leased that property?

A. I did. I found that out.

Q. Who was that?

A. Orville Kisor.

Q. Pardon me?

A. Orville Kisor.

Q. That is the same man we have been talking about throughout?

A. Yes.

Q. Mr. Orville Kisor is not only the distributor but he [fol. 2290] is also the owner of the land?

A. No, sir, he is not.

Q. What?

A. He is not the owner of the ground.

The Court: What has he got, the ground lease?

The Witness: He has got the master lease from the Ingham Reed Investment Corporation of Shelton, Washington.

By Mr. Paradise:

Q. But Mr. Kisor has an interest in that property personally paramount to any interest Richfield has, is that not correct?

Mr. Hall: I object to that as calling for a conclusion, your Honor.

The Court: Sustained. It calls for a conclusion of the witness. Go ahead.

By Mr. Paradise:

Q. Is it not correct that Mr. Kisor, then, is the Richfield's lessor?

A. I know now. As far as I am concerned—now, I don't know. I never saw the lease.

Q. No, I am talking about the time you were there.

A. Yes, sir, he was.

Q. During the time you were paying Mr. Kisor this $100 a month on the side?

A. Yes, sir.

Q. And also during the time that Mr. Kisor would not have Richfield change the hoist in the property?

[fol. 2291] A. That is correct.

Mr. Paradise: Yes. That is all.

The Court: All right. Any redirect?

Mr. Hall: No redirect, your Honor.

Mr. Paradise: Just one moment.

The Court: I forgot to take a recess.

The Witness: This has been a long session.

Mr. Paradise: My attention has been called to this fact.

Q. I think you said that the lawsuit was not decided against you?

A. That is right, sir, it wasn't. It was not decided against me.

Q. Was it not true that the jury found that you were not damaged and that you were not entitled to anything?

A. Yes.

[fol. 2292] Mr. Dixon: I think that is wholly irrelevant to this question.

The Court: Well, you lost out, anyway.

The Witness: No, sir. I lost out, but the jury gave me the verdict, sir. The judge decided I was not entitled——

The Court: Oh, I see.

Mr. Hall: May I state the appeal was on the matter of the damages allowed, and not on the question of whether Mr. DeLonge was unlawfully evicted. They did give him a certain sum, the jury did.

Mr. DeMartini: I beg your pardon on that.

The Court: Let's look at the decision.

Mr. Hall: I think that is the best answer, your Honor.

The Court: Yes, let's look at the decision. Delonge v. Richfield Oil Corporation. It is a very complicated case. It is a short case, but a very complicated case. The case was decided on the basis of unlawful eviction, and the damages were limited by the trial court merely to the cost of moving his stuff away, and the Supreme Court held that a refusal of the instruction as to other damages had not been properly excepted to, so that the layman's interpretation is correct. He won the case, he won the moral victory that he was unlawfully evicted, but that he didn't have any damage. That is the way I read this opinion.

[fol. 2293] The Witness: Yes, sir.

The Court: And they sought to establish, as it says,

> ". . . at the time of the trial, plaintiff sought to establish two items of damage: The cost of moving the inventory from the premises; and the loss occasioned by the forced sale of such inventory after its removal from the premises."

Of course, that would be the latter item, the instruction as to the latter item, which was not excepted to. So your lawyers overlooked it. It is very interesting to read this, and I will read from page 702, 215 Pac. Reporter, 2d Series, to show the summary manner in which this transaction was made:

> "On September 1, 1946, Robert J. DeLonge entered into possession of the One Stop Service Station, at

Olympia, Washington, under a lease from Richfield Oil Corporation. The lease contained a non-assignment clause, and provided that either party could terminate the lease on twenty-four hours' written notice. In the summer of 1947, DeLonge became delinquent in the payment of rent to Richfield, and indicated to the latter his willingness or desire to sell the business. [fol. 2294] Both DeLonge and Richfield began looking for a prospective purchaser and each secured one. On September 22, 1947, Richfield's representatives and Stanley Winters, the prospective purchaser Richfield had found, met with DeLonge and Horace DeHoog, the prospective purchaser DeLonge had found, at the service station. Richfield's representatives declined to approve the sale of the business to DeHoog, and insisted that the new tenant be Winters.

"DeLonge worked most of that day taking an inventory of the stock of goods, which inventory was checked by Winters and one of the Richfield representatives. At six o'clock that evening, the Richfield representative orally advised DeLonge that Winters would take over and operate the station at eight o'clock the next morning, September 23, 1947. Witners bought from DeLonge all of the Richfield approved products, in the amount of $1,603.16, then in the station. Winters refused to buy other products which DeLonge then had at the station. DeLonge worked all that night segregating [fol. 2295] and moving to his place of residence the products and articles of personal property not purchased by Winters. Winters took over the station at eight o'clock a. m., September 23, 1947.

"DeLonge thereupon brought this action against Richfield to recover damages by reason of alleged unlawful eviction. The complaint and amended complaint were not (except for paragraph VIII of the amended complaint) made a part of the record before us. However, we understand from the briefs that, at the time of the trial plaintiff sought to etsablish two items of damage: The cost of moving the inventory from the premises; and the loss occasioned by the forced sale of such inventory after its removal from

the premises. Defendant cross-complained for back rental and for merchandise sold to plaintiff and not paid for, the total of both items being $364.55.

"It was stipulated in open court that defendant should have judgment on its cross-complaint as prayed for, and this item was therefore not submitted to the [fol. 2296] jury. As to the complaint and amended complaint, the trial court limited the jury to the consideration of the item of damage based on the cost of moving the inventory from the premises. The jury returned a verdict for plaintiff in the sum of thirty dollars, this sum representing the cost of moving the inventory. Judgment was thereupon entered for the defendant in the sum of $334.55, on the basis of the stipulation and jury verdict. Plaintiff has appealed."

Well, let's read the rest of it:

"Appellant first assigns as error the giving of instruction No. 17, relating to the measure of damage. Only the first sentence of this instruction is set out in the brief. Rule 16(5), Rules of Court, 18 Wash. 2d 18-a, requires that whenever error is assigned upon the giving or failure to give instructions, such instructions 'shall be set out in the brief in full.' This assignment of error therefore cannot be considered. . . .

"Appellant's last three assignments of error concern the trial court's failure to give certain requested in [fol. 2297] structions. Each of these requested instructions relates to damage sustained by appellant because of the necessity of his making a forced sale of the portion of the inventory which he removed to his home. At the time of the trial, on objection by respondent, appellant was not allowed to introduce any evidence to prove this claimed damage. Following this ruling, appellant's exhibit B, which was a copy of the inventory and constituted the only specific evidence as to the items removed to appellant's home, was withdrawn from the jury. At the close of appellant's case, the trial court granted respondent's motion to withdraw

from the consideration of the jury any claim of damage based on the forced sale of the inventory.

"There accordingly being no evidence before the jury as to this item of damage, the proposed instructions, submitting that item for the consideration of the jury, were properly rejected."

But here comes the rub:

"Appellant did not assign as error any of these [fol. 2298] rulings of the trial court which operated to exclude from the jury all evidence on this item of damage. Nor did appellant assign as error the giving of that portion of instruction No. 17, which expressly advised the jury that it could not consider any damages alleged to have been incurred as the result of the loss or the forced sale of appellant's inventory. Under Rules 16(5) and 21, Rules of Court, 18 Wash. 2d 18-a and 21,-a, alleged errors of the superior court will not be considered unless the same be clearly pointed out and discussed in the appellant's brief. . . .

"Had these rulings been assigned as error we still could not have considered them, since appellant did not except to instruction No. 17 on the ground now relied upon, i. e., that this item of damage should not be taken from the jury."

In other words, you did not lose on the merits, because the Supreme Court never passed upon the question of whether you are entitled to damages by reason of the forced sale, and they didn't do that because your lawyer did not comply with the rule of court.

[fol. 2299] So that your interpretation that you lost on a technicality is right. In California you would not have needed these exceptions. In California when a man makes a ruling, and that applies in the Federal Court too, it is supposed to be excepted to, so that if your lawyer overlooked something it would not make any difference.

You lost here because your lawyer overlooked something in the trial court and in the appellate court, and you do not have a decision on that matter. In the lower court they found you were not entitled to prove or that you were not

entitled to submit to the jury the question of the loss you incurred by reason of their refusal to sell to the other party, and forced you to get out in 24 hours.

Now, I am not saying that the higher court would have done any differently, but our system is based upon the proposition that a trial judge may be wrong and that a litigant has not had his day in court unless the higher court has decided upon the merits that the trial court was right.

In this case the Supreme Court was never given a chance to decide whether you were entitled to damages because of the forced sale to people to whom you didn't want to sell. They could have continued it for a month, even under the contract. They could have said, "All right, I will give you a month to get out," but they forced you to do so in [fol. 2300] twenty-four hours, insisting upon that clause which, of course, was in the contract.

The Witness: That is right.

The Court: But the higher court had no right to consider that where you offered the two alternatives, whether their refusal to take your man would have paid you for all and would not entitle you to damages, despite the 24-hour clause.

I know how I would have decided that on general equity principles. I just think this man is entitled to the full benefit of an interpretation of this decision, lest it be believed that he had a final day in court. He did not.

The Witness: Would your Honor indicate that I have a recourse?

The Court: No.

The Witness: That is what I thought.

The Court: I am telling you you lost because you had lawyers who were unfamiliar with the practice, or they were unfamiliar with the rule on appeal. They did not take the proper exception. That is the way it looks to me.

The Witness: Thank you.

The Court: In other words, I am not saying the trial court may not have been right, but I am saying the Supreme Court was not allowed to determine whether the trial court [fol. 2301] was right because your lawyers fumbled the ball.

The Witness: Yes, sir.

Mr. Dixon: May it please the court, before we adjourn I might say to your Honor that the government has six witnesses, all of which are from out of the state, and if we can conclude with them today, it would be appreciated, I am sure, by all of them.

The Court: I haven't taken any recess. I have a luncheon engagement today, the first one in months, but I will be back in time, and then, if necessary, we will go until we complete with them. We will shorten it.

Mr. Dixon: Yes. I am certain the others will not take so long.

The Court: You see, I haven't even had a recess this morning.

Mr. Dixon: Yes, we appreciate that, your Honor.

(Whereupon at 12:15 o'clock p. m. a recess was taken until 2:00 o'clock p. m. of the same day.)

[fol. 2302] Friday, May 18, 1951—2.00 P. M.

The Court: All right, gentlemen.

Mr. Somerville: May I offer Government's Exhibits 19 and 19-A in evidence.

Mr. Paradise: Which are they?

Mr. Somerville: Those are the McRae sales contract papers.

Mr. Paradise: Are these the ones that he testified to or are these additional ones?

Mr. Somerville: Yes, he testified to those. Those were the original papers.

Mr. DeMartini: No objection.

The Court: Which papers are those, McComb's?

Mr. Somerville: No, Gordon McRae who testified yesterday.

The Court: Oh, the man who had the famous name.

Mr. Somerville: Yes.

The Court: Well, it is a famous singer, you know, Gordon McRae.

The Clerk: Are these received, your Honor?

The Court: Yes, it may be received.

The Clerk: 19 and 19-A in evidence.

The Court: I think we ought to say for the record we are not responsible for the grammar of the witnesses. I [fol. 2303] noticed the first thing when I opened here they asked about the figures and he said, "They was written." Even the attorneys sometimes slip and say "who did you see?" when it should be "whom". I hope you put down "whom" for the attorney. I will let you amend the question if a lawyer starts with "who." Just give him credit for "whom".

(The documents referred to were marked Plaintiff's Exhibits 19 and 19-A and received in evidence.)

Era T. Vaughn, called as a witness by the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: What is your name, please?
The Witness: Era T. Vaughn.

Direct examination.

By Mr. Alexander:

Q. Where do you live, Mr. Vaughn?
A. Las Vegas, Nevada.
Q. Speak up so we can hear you here.
A. Las Vegas, Nevada.
Q. What is your employment?
A. I am a driver-salesman for McQuay Supply Co., distributors of Quaker State oil.
Q. What is the nature of the business of the McQuay Supply Co.?
A. We distribute Quaker State oil.

Mr. Paradise: I am afraid I can't hear you, Mr. Vaughn. [fol. 2304] The Court: Speak a little louder. Haven't you just gone through that Helldorado shouting all over the place?
The Witness: I didn't do much shouting, Judge.
The Court: Well, do your shouting right here so everybody can hear you.

By Mr. Alexander:

Q. What is the nature of your duties with the McQuay Supply Co., Mr. Vaughn?

A. As driver-salesman I make the rounds among the customers, take orders, deliver the orders, also take care of my inventories of our stock that we have on hand.

Q. Do you have care of the orders of the inventories maintained, that is, the company's inventory?

A. Yes.

Q. Are you familiar with the source from which your company obtains the Quaker State oils and greases?

A. It comes direct to us from Oil City, Pennsylvania.

Q. What is the area of operation that your company markets the Quaker State products in, Mr. Vaughn?

A. We have all of the southern Nevada and come down into California as far as Baker.

Q. As far as what?

A. Baker, Baker, California.

Q. In your course of duties——

The Court: Don't you know the town?

Mr. Alexander: Baker, yes, sir.

The Court: It is right at the edge. That is your last [fol. 2305] town before you go to Death Valley. There is Baker, Oregon, too. My friend Judge Claude McCullough of Oregon was born there. His father was a judge there before him. I am saying that for the benefit of the Portland witnesses, giving them a lot of local history.

[fol. 2306] By Mr. Alexander:

Q. Mr. Vaughn, your duties as a driver also include contacting service station outlets?

A. Yes, sir.

Q. How long have you been employed with the McQuay Supply Company?

A. I started in in January, 1949.

Q. Have you made any calls on service station outlets which bear the colors of the Richfield Oil Corporation?

A. Yes, sir.

Q. Calling your attention to a service station located at Fremont Street, 5th and Fremont Streets, Las Vegas,

operated by George Frey, have you ever called on that service station?

A. Yes, sir, I have.

Mr. DeMartini: Will you stipulate that is an L-O station?

Mr. Alexander: So stipulated.

By Mr. Alexander:

Q. Have you had any conversations with Mr. Frey in connection with either the attempt to sell, or actually have you made any sale of Quaker State products?

A. I have attempted to.

Q. When did these occur, Mr. Vaughn?

A. Shortly after I went to work for McQuay Supply. That would be along about February, of 1949, that I began to call on him trying to sell him Quaker State. Along about June he told me that it was simply no use, he was [fol. 2307] afraid of his lease, and he wished I wouldn't, so I discontinued.

Q. Have you had any other conversations with Mr. Frey, other than these two you refer to?

A. Well, I called on him several times during that time, at which time he told me—he said he had handled it at one time, but that Richfield had made him take it out, and that he was afraid of his lease, so he was afraid to put it back in.

Mr. Paradise: You let your voice drop, Mr. Vaughn, and we can't hear the tail end of it.

The Court: Yes, speak up.

The Witness: He said he was afraid to put in back in, that he was afraid of his lease.

The Court: That is right. I can tell you don't frequent the crap tables.

The Witness: No, I don't.

The Court: Calling the next number to make your point. You haven't learned to talk to the dice?

The Witness: Not very well, I haven't.

The Court: You don't talk to them?

The Witness: Have you got a pair of dice, your Honor?

The Court: No, but it is good for developing your voice, you see, you learn to talk.

By Mr. Alexander:

Q. Now, calling your attention to a service station located [fol. 2308] at 629 South Main Street, Las Vegas, operated by Charles E. Ronnow, have you ever called at that station?

A. Called on Mr. Ronnow? Yes, sir.

Mr. Alexander: Will counsel stipulate that is an L-O station?

Mr. DeMartini: So stipulated.

By Mr. Alexander:

Q. Have you had any conversation with Mr. Ronnow with respect to selling or attempting to sell him Quaker State oil?

A. Yes, I did sell to Mr. Ronnow.

Q. Have you had conversations with him?

A. Yes. I asked him about putting out a curb sign and can racks, but he laughed and said they were not allowed to display anything except Richfield approved products.

Q. Have you made sales of Quaker State products to Mr. Ronnow?

A. Yes, I make them to Ronnow.

Q. Are these products that you sold to Mr. Ronnow openly displayed on his premises?

A. No. He keeps a few cans hid in the filling station. The rest of them are locked up in the warehouse on the back of the lot.

Q. Now, Mr. Vaughn, calling your attention to a service station located at 501 South Fifth Street, on Fifth and Clark [fol. 2309] Streets, Las Vegas, operated by Mr. Newell Kimball——

Mr. Alexander: Will counsel stipulate that also is an L-O station?

Mr. Paradise: So stipulated.

By Mr. Alexander:

Q. (Continuing) —have you ever made sales of Quaker State products to Mr. Kimball?

A. Yes, I have.

Q. Are you currently making sales of Quaker State to him?

A. Well, we make small sales. He only takes two cases at a time, due to the fact that is all the room he has for keeping that amount hid. He would rather take five and get his quantity discounts, but he doesn't have room.

Q. Have you had conversations with him in connection with purchasing Quaker State?

A. Yes.

Q. In the discussions has there been anything said about the quantities he might purchase?

A. Yes. I would suggest his taking five cases, where he would get his quantity discount, and that was the reason that he gave me for not desiring that, and he says that he only had room for two cases under the counter, and he says, "You know, we have to keep them hid."

Q. These three service station operators you testified to, has there been any discussion in your conversations with [fol. 2310] them as to the quality or comparability of these products as compared with Richfield petroleum products?

A. Well, I never felt it ethical to run any man's products down, and the way I have always talked to them was, "You have just as good an oil as I have, but it doesn't suit everybody, and there is going to be people coming through that want your oil, and there is people coming through wants my oil, and if you have all these different kinds that are in demand, then you are prepared to serve them with what your customer wants."

Mr. Alexander: No further questions.

The Court: Oh, you make him work. Come on, Mr. DeMartini.

Mr. DeMartini: O. K. We can't think up a question to ask the witness, your Honor.

The Court: I thought you knew what the witness was going to testify to in advance.

Cross-examination.

By Mr. DeMartini:

Q. Did you ever attempt to sell your oils to Standard Stations, Inc. stations, Mr. Vaughn?

A. I have talked to them. That is, you mean the company-operated stations?

Q. That is correct.

[fol. 2311] A. I have talked to them, but have never been able to get any oil in there.

Q. What did they tell you?

A. That it is a company-operated station, and that the company doesn't allow them to.

Mr. DeMartini: That is all.

Mr. Alexander: One further question, your Honor.

Redirect examination.

By Mr. Alexander:

Q. Mr. Vaughn, do you solicit the Chevron stations of the Standard Oil Company?

A. Yes, sir.

Q. Are you able to sell them Quaker State oil products?

A. I don't believe there is one in my immediate territory there, except the one out in Henderson, that I don't have Quaker State into.

Q. Mr. Vaughn, are these products openly offered to motorists and the public?

A. Yes, they are. I have offered my curb stands and can racks.

Mr. Alexander: That is all.

The Court: I think John Hall would be glad to hear that. Step down.

(Witness excused.)

[fol. 2312] The Court: All these witnesses, unless you have arranged for them to stay, are excused as soon as they are through. For your benefit, I will say we are going to run through a large group of you so that you will not have to stay over until Tuesday. Not that you are not welcome in town, but probably you can find more excitement at Las Vegas and other places over the week-end than you can here, and probably cheaper.

Mr. Greer: Mr. Ellena.

PETE ELLENA, called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

The Clerk: What is your name, please?
The Witness: Pete Ellena.
The Clerk: Will you spell your last name, please?
The Witness: Ellena, E-l-l-e-n-a.

By Mr. Greer:

Q. Where do you live, Mr. Ellena?
A. 721 Lander Street, Reno, Nevada.
Q. What do you do for a living, sir?
A. I am a service station operator.
Q. Have you ever leased a service station site from [fol. 2313] the defendant, Richfield Oil Corporation?
A. I have.
Q. When was that, sir?
A. That was around August 29th or September the 1st, in 1948.
Q. How did you happen to enter into negotiations with Richfield, Mr. Ellena?
A. Well, the Richfield Oil Corporation was building some new stations there in Reno. They were building two in Reno and one in Sparks. So I seen Mr. Lani, the TBA distributor, and also Mr. Reed, the manager, and they told me I could have any station in Reno, or the one in Sparks.
Q. You say you spoke to Mr. Reed?
A. Yes, sir.
Q. Is that Mr. Randolph Reed?
A. Yes, sir, Randolph Reed.
Q. Is he the district manager?
A. Yes, sir.
Q. You asked him if you could lease one of the new stations that were being built?
A. Yes, sir.
Q. What is the address of the one that you leased?
A. The one I took was at 895 South Virginia.
Q. How much was your investment?

A. Around $3,000.

[fol. 2314] Q. What arrangement did you make for paying flat rent?

A. Well, I had a lease that called for $50 a month flat rent, and one cent for every gallon over 5,000 gallons.

Q. Did you look at your lease form before you signed it,—read it over?

A. What is that?

Q. Did you read your lease over before you signed it?

A. Well, before I took the station, they never gave me the lease, but I saw one before. I knew what the lease was.

[fol. 2315] Q. I see. Did you know that there was a 24-hour cancellation clause in that lease?

A. Oh, yes, you bet.

Q. Did you ask Mr. Reed what that clause was in there for?

A. I asked Mr. Reed if I could get a longer lease instead of the 24-hour lease.

Q. What did he say to you?

A. "Go ahead. Don't worry about it. Richfield Oil Company is a good company. You don't have to worry about that 24-hour lease." That is what he told me.

Q. Were you told about the Richfield TBA program?

A. I was told plenty of times.

Q. What was the name of your TBA distributor?

A. Les Lani.

Q. Did Mr. Reed tell you anything about where you should buy your TBA products?

A. Yes, sir.

Q. What did he tell you?

A. He told me I was supposed to purchase my tires, batteries and all accessories from Les Lani out of the Richfield plant there in Reno.

Q. Did you purchase all your TBA from him?

A. I did when I first started up after I went in the station.

Q. Did you continue to purchase it all from him?

[fol. 2316] A. No, I didn't.

Q. Who did you buy from?

A. Well, I bought from different parts houses and I also bought from Reno Vulcanizing Works.

Q. What kind of tires did you buy from the Reno Vulcanizing Works?

A. Goodyear tires.

Q. Were Goodyears the same price that you would have purchased from Mr. Lani?

A. Yes, sir.

Q. Why did you purchase from Reno Vulcanizing Works instead of him?

A. Well, I got them from Reno Vulcanizing because that was always open, and when I needed tires I could call them up and he would bring them to me in about five or ten minutes. Les Lani, he was always out of town and you never could get hold of him.

Q. Did you ever handle any Quaker State oil, Mr. Ellena?

A. Yes, sir.

Q. Why?

A. Well, I had to on demand from my customers, for my bread and butter.

Q. Did any representative of Richfield ever speak to you about handling that Quaker State oil?

A. Yes, sir.

[fol. 2317] Q. Who did?

A. Mr. Hunt.

Q. Who was Mr. Hunt?

A. He was the new manager of Richfield bulk plant after Mr. Reed left.

Q. When did Mr. Hunt speak to you about it?

A. Well, I can't quite figure out what month it was. I know right after Mr. Reed left. It was in the spring on that "go places" contest with Richfield.

Q. In the spring of 1949?

A. Yes, in the spring of 1949.

Q. Did this conversation take place at your station?

A. Yes, sir.

Q. What did he say to you?

A. Well, he just walked in the service station there and I had some oil on the shelves there, and he took a look at the oil there and he told me to move it.

Q. Did he say anything to you about your TBA purchases?

A. Yes.

Q. What was it?

A. Well, he asked me how come I was not buying batteries from him and stuff. Well, I did buy batteries from him, but half of his batteries I bought from him were all dead. They were no good.

Q. Did you keep on handling Quaker State oil?

[fol. 2318] A. Yes.

Q. What was the name of your merchandiser, Mr. Ellena?

A. The first merchandiser was Jack Manford and the other one was McGowan.

Q. Did Mr. McGowan ever speak to you about Quaker State?

A. He told me a couple of times that Mr. Hunt told him to tell me to hide that Quaker State or don't buy any more oil there, you know, don't handle it.

Q. I am going to direct your attention to the month of August, 1949 and ask you if Mr. McGowan ever came to see you at your station during that month?

A. Yes. It was in the last few days of August 1949. McGowan came into my station one day and he hung around all day. So I asked him, you know, what was wrong. And he never said nothing. So he came the following day and he came the following day, and about the fourth I asked him what was wrong. So he asked me if I would go for a cup of coffee with him. So I went downtown and got a cup of coffee with him. And he said, "Mr. Hunt told me to tell you that you are going to have to leave within 24 hours."

Q. What did you say to that?

A. I couldn't say very much. I was just too passed out. I couldn't believe it.

Q. Did you tell him that you had been told that 24-hour cancellation clause was not to be used?

[fol. 2319] A. What is that?

Q. Did you tell him what Mr. Reed had told you when you came in?

A. Oh, no. I didn't tell him what Mr. Reed told me, no.

Q. Did Mr. McGowan say anything else at that time in explanation of the news he had for you?

A. Well, Mr. McGowan told me that I was one of the best operators in Reno, Nevada, that I kept my station clean, took care of my customers, and that he couldn't

help it. It was a damn, dirty shame to pull a trick like that on me, that he was just taking orders from Mr. Hunt.

Q. Did he make that statement to you at the time he told you to leave?

A. Oh, yes, he did.

Q. Who was to succeed you in that station?

A. Well, I asked Mr. McGowan. I says, "Who is going to take over?" "Oh," he said, "we have six or seven operators over there that want your service station."

Q. Did you try to contact any of the top officials of the defendant corporation to find out why you were being cancelled?

A. Well, that night I couldn't get hold of my lawyer, so I went down to the Western Union and I sent a night letter to Richfield Oil Corporation in Los Angeles.

Q. Did you ever get any response to that communication?

[fol. 2320] A. No, sir.

Q. Have you gotten any response to it yet?

A. No, sir.

Q. Does the name Bob Marsh mean anything to you?

A. Yes, it does.

Q. Who was Bob Marsh?

A. Bob Marsh was one of the operators that was to take my station over.

Q. Did he actually take it over?

A. Yes, sir.

Q. What kind of financial arrangements did he make about purchasing your inventory?

A. Finance?

Q. How much money did he give you?

Mr. Paradise: I object to this as irrelevant unless the defendant is connected up with it.

The Court: Overruled at present. Go ahead. Who was present? Were any of Richfield's men there when you were checked out?

The Witness: Yes, sir.

The Court: All right, go ahead now and tell us.

By Mr. Greer:

Q. How much money did he give you?

A. Mr. Marsh gave me a check for a down payment, I think, of about $400. I think it was either $400 or $450.

Q. Did he make any statement to you about that check [fol. 2321] at the time he gave it to you?

A. Yes, sir. He told me if I wouldn't mind, he said if I would hold it for him for three or four days because he didn't know whether he had the money in there or not.

Q. What was the value of your inventory at that time?

A. It was around $3,300.

Q. At the time you went into this station was anything said to you by Richfield representatives about buying a coke machine?

A. Yes, sir.

Q. What was said to you?

A. Mr. Reed told me. He says, "You might as well buy a Coca-Cola machine because you have got to have one. It brings you business." Which he is right, it does bring you business.

Q. Did you buy one?

A. Yes, sir.

Q. How much did it cost you?

A. About $278.

Q. Did any discussion arise about the time you had to turn your business over to Mr. Marsh about that coke machine?

A. Yes, sir.

Q. What was said?

A. Bob Marsh said, "I don't want the coke machine."

[fol. 2322] Q. Did he take it?

A. No, sir.

Q. What did you do with it?

A. I took it over to my mother-in-law's house.

Q. Did you have an adding machine?

A. Yes, sir.

Q. Did Mr. Marsh take that?

A. No, sir.

Q. Did you have any foreign oils, any non-Richfield oils in your station at the time that you had to dispose of it?

A. Yes. I had Ring-Free MacMillan oil.

Q. What happened to that MacMillan oil?

A. Mr. Fields came down from Yuba City, California, and he told me, you know, he knew that he would have to pick up the oil, so he paid me in cash and I gave him the oil.

Q. Was Mr. Fields the representative of the MacMillian Oil Company who had sold you that oil?

A. Yes, sir.

Q. Did he come from Yuba City, California to Reno, Nevada to pick it up?

A. Yes, he did.

Cross-examination.

By Mr. DeMartini:

Q. You leased this from Richfield on an L-O basis, didn't [fol. 2323] you, Mr. Ellena?

A. L-O, leased out?

Q. Yes.

A. Yes, sir.

Mr. DeMartini: May it be stipulated that Mr. Ellena held Form 542 lease dated September 10, 1948 on print date 1-47?

Mr. Dixon: With a minimum rental of what amount?

Mr. DeMartini: With a minimum rental of $50 plus one cent over 5,000.

Mr. Dixon: Each month?

Mr. DeMartini: That is right. $50 per month plus one cent over 5,000, or the equivalent of one cent a gallon rent.

Mr. Dixon: So stipulated.

By Mr. DeMartini:

Q. This was a new station, wasn't it, Mr. Ellena?

A. Yes, it was.

Q. It had never been open before?

A. That is right.

Q. You were advised at that time, before the time that you were put in there as a lessee, that you had to operate in accordance with Richfield policies? You knew that, didn't you?

A. No, they didn't tell me that, not Richfield policy, no. [fol. 2324] Q. You knew there was a 24-hour termination privilege?

A. I knew that because I had a Richfield station before.

Q. You were expected to sell Richfield products there?

A. Well, certainly.

Q. You were told to wear uniforms?

A. Yes, I was.

Q. Wasn't that one of the points of controversy, that you refused to wear uniforms after you went into the station?

A. No, no.

Q. Did you wear uniforms at all?

A. I did wear uniforms.

Q. Wasn't there some controversy with Richfield with respect to your failure to comply with their advertising programs or give way to Wildflower programs, summer shield and winter shield programs?

The Witness: Will you repeat that question, please?

The Court: Read the question.

(Question read by the reporter.)

A. Yes, there was.

By Mr. DeMartini:

Q. You refused to obey their directions in that regard?

A. I couldn't obey their directions on that one deal there because I just couldn't do it. Do you want me to tell you what it is?

Q. Yes, go ahead.

[fol. 2325] A. Mr. Reed—they were having this Richfield Go Places contest and I already had about 15 cases of Richfield oil. Well, he wanted me to buy about a hundred cases and keep it in his warehouse and pay cash for it, and when I wanted it, go over there and pick it up. I don't do business that way. In other words, he wanted to push this stuff onto me. I don't mind handling Richfield products, but I didn't want to have an over-stock of it.

The Court: What was your average stock that you carried?

The Witness: Of oil and gas?

The Court: Yes, of oil.

The Witness: Well, I always carried about—well, let's see—15 cases. I always had over a hundred gallons of oil.

The Court: How much in a case—how many in a case, 12 or 24?

The Witness: There is 24 six-gallons in a case.

The Court: He wanted you to carry how many?

The Witness: Oh, he wanted just, you know—he knew I had money, you see, and he wanted me——

The Court: Oh, I see.

The Witness: He wanted me to buy a hundred cases so that it would look good for him, you see, for the people down in San Francisco.

The Court: But you couldn't see it?

[fol. 2326] The Witness: Oh, no, I couldn't see that. No, sir.

The Court: All right.

By Mr. DeMartini:

Q. How many customers did you have for Quaker State oil?

A. How may what?

Q. Customers did you have for Quaker State oil?

A. How many customers?

Q. Yes.

A. Oh, I didn't have too many, but what I did have I took care of them.

Q. How many did you have?

A. Maybe about five or six a month, not very many.

Q. Well, did you have regular customers who came there and wanted it?

A. Yes. That is right. I tried to sell them on Richfield Penn and Richfield Lube, but they see that name "Quaker" name, so you can't lose them as a gas customer.

The Court: How would you say in percentage? What were your Quaker State sales in percentage of your sale of oil?

The Witness: What percentage?

The Court: Yes.

The Witness: Oh, I don't think it could be over about one per cent.

The Court: About one per cent?

[fol. 2327] The Witness: Yes. I didn't buy very much of it.

The Court: In other words, you were pushing their products?

The Witness: Oh, sure.

The Court: But you wanted the privilege of selling the others to keep a customer, was that the idea?

The Witness: That is right, yes, sir.

The Court: You were not deliberately going out and overstocking yourself with the other?

The Witness: Oh, no. I should say not. After all, Richfield gave me the station. Why should I push the other products?

The Court: Well, I just wanted to find out.

Mr. DeMartini: That is all.

The Court: All right. Any questions?

Mr. Greer: Just one, your Honor.

Redirect examination.

By Mr. Greer:

Q. These uniforms you have been asked about, Mr. Ellena, who purchased those uniforms?

A. Mr. Randolph Reed—that is his name, I think—I gave him the money and he told me to order them through Richfield.

Q. What I mean is who paid for them?

A. I paid for them.

[fol. 2328] Q. You paid for them.

A. Yes, sir.

The Court: I forget what color they are. Are they that dull green? They look like the old fashioned uniforms that we used to wear in the war?

The Witness: No, sir.

The Court: In the first World War?

The Witness: It is that terrible looking blue of the company.

The Court: I was going to say, I didn't know anybody would object to the uniform. I remember going into a little station about 1:00 o'clock in the morning, and evidently the wife had come along to help him, and it was cold and she was very proud of the big jacket she was wearing, you know, to keep her warm.

Mr. Greer: Stand aside, sir.

The Court: All right, step down. Call your next witness.

CLARK FERRIS WAGNER, called as a witness by the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: Clark Ferris Wagner.

Direct examination.

By Mr. Greer:

Q. Where are you from, Mr. Wagner?

A. Taft, California.

[fol. 2329] Q. What is your occupation, sir?

A. Owner and operator of a Union Oil service station.

Q. Have you ever leased a service station outlet from the defendant Richfield Oil Corporation?

A. I leased two of them.

Q. Where did you lease those stations?

A. One at 7th and Center Street at Taft, and the other at 4th and Kern Streets, Taft.

Q. With reference to this station at 4th and Kern when did you enter into that lease?

A. As far as I remember, it was January the 17th or February the 17th of '42.

Q. Do you recall approximately what your investment was?

A. Well, down there I combined two stations at the time and I would say——

Q. Did you move your inventory from your first station?

A. That is right.

Q. To your new station?

A. That is right.

Q. How big an inventory did you have?

A. Oh, I would say about, from the one station, about $1700, and I moved that down and the other one cost me, I think, about sixteen or seventeen hundred to buy.

Q. Would you say that you had a total investment of [fol. 2330] something over $4,000?

A. Around approximately $4,000.

Q. What does the name Frank Kelly mean to you, Mr. Wagner?

The Court: A good Irish name, I guess.

A. Frank Kelly was the Richfield Oil Corporation representative that called on me.

Q. Was he a merchandiser?

A. I believe so at the time.

Q. Did you ever handle any Pennzoil or Quaker State in this service station, Mr. Wagner?

A. Lots of it.

Q. Where did you keep that foreign oil?

A. Kept it hid under the shelf.

Q. Did you keep it hidden?

A. Rags all around it.

Q. Would you tell the court why you handled Pennzoil and Quaker State?

A. Well, I had several accounts, especially I had Kern Mutual Telephone Company there at Taft and they had to have Pennzoil, that is all, and I couldn't afford to lose the business.

Q. How much business did that Kern Mutual Telephone Company account mean to you?

A. Oh, they ran from $150 to $250 a month.

[fol. 2331] Q. Were you ever cautioned by Mr. Kelly about handling Pennzoil and Quaker State?

A. I would say five or six times.

Q. What did he say to you?

A. He said, "Mr. Wagner," he said, "if you don't get that foreign oil out of here one of these days, I will have to serve the 24-hour notice on you."

Q. Are you familiar with the Richfield TBA program?

A. Yes, sir.

Q. Where was the Richfield TBA distributor located?

A. Well, originally it was in Bakersfield and then they changed it to Taft, the Richfield Oil distributor, Everett Olin.

Q. Did you handle any tires, batteries and accessories that were not Richfield approved?

A. Lots of them.

Q. What were some of them?

A. I handled Firestone tires, U. S. Royal tires, Armstrong tires. I handled Brake Block fan belts, A-C spark plugs, Fram oil filters, Delco batteries, Exide batteries.

Q. Were you ever cautioned by Mr. Kelly or any other representative of Richfield about that unauthorized TBA?

A. Yes, several times.

Q. What did he say to you about that?

A. He said: "Get that out of here."

[fol. 2332] Q. Mr. Wagner, directing your attention——

The Court: I did not quite get the significance of the $150 to $250. I lost the connection.

The Witness: That was the Kern Mutual Telephone Company. That was one of my high accounts and they insisted on Pennzoil.

The Court: Incidentally, Taft is an oil town?

The Witness: That is right.

The Court: And you have varied influxes of workers, haven't you?

The Witness: Yes, sir.

The Court: So that people who may come from other states, who come to work in the oil fields when there is a greater demand, they have their own ideas about oil and do not want to be confined to certain particular products, isn't that true?

The Witness: Right, sir. That is right.

The Court: It would be truer than of operating a station in a town, even at Bakersfield, for instance, there would not be a likelihood of a change of patronage?

The Witness: Bakersfield is just about the same type of town. Ours is just a little smaller.

The Court: But there is an overturn of patrons?

The Witness: A terrific overturn.

The Court: So that the likelihood of having set customers

who always want the same thing is not so great as in other [fol. 2333] cities?

The Witness: That is right, yes, sir.

The Court: All right.

By Mr. Greer:

Q. Mr. Wagner, directing your attention to the morning of July the 27th, 1947 would you tell the court what happened that morning?

A. I opened the station at 7:00 o'clock in the morning and up drove Mr. Kelly, and he presented me with this 24-hour letter notice. And he said to me, he says, "Mr. Wagner," he says, "I warned you this was coming if you didn't get rid of the foreign products."

Mr. Greer: I ask that this be marked Government's Exhibit next in order.

The Court: Go ahead, finish your conversation.

The Clerk: Government's Exhibit 21 marked for identification.

(The document referred to was marked Plaintiff's Exhibit 21 for identification.)

The Witness: That was all. That was enough for me.

The Court: So you got notice. When did you move out?

The Witness: Oh, he gave me an extra day. He says, "I happen to have a lot to do today." He says, "Would it be all right if I put you out Wednesday?"

Mr. DeMartini: May I see it, Mr. Greer?

Mr. Greer: I will show it to you but I want to ask the witness a question about it first.

[fol. 2334] Q. Mr. Wagner, I show you this paper and ask you what it is?

A. That is the 24-hour notice, the one I received.

(Document shown to counsel for defendant.)

Mr. Greer: Your Honor, we offer this in evidence.

The Court: All right, it may be received.

The Clerk: 21 in evidence.

(The document referred to was marked Plaintiff's Exhibit 21 and received in evidence.)

By Mr. Greer:

Q. What did you do after Mr. Kelly told you you would have to leave, Mr. Wagner?

A. Well, that night I called Mr. Cecil Burgner. I think he was down at Pasadena at the time.

Q. Who was he?

A. He was the fellow that gave me my first job with Richfield back in 1936.

Q. What did you tell him?

A. Well, I just told Cec that, "I think there has been a little injustice done there," and if he could help me out I would appreciate his help.

Q. Did you come down to Los Angeles to talk to any representative here?

A. No. He drove up to Bakersfield where Mr. Frank Kelly's headquarters were and he talked to him from about 5:00 o'clock in the afternoon until about 11:00 o'clock at night, trying to convince him that he should leave me in [fol. 2335] there. And they went home at 11:00 o'clock and he told me he was not able to do a bit of good with Mr. Kelly.

Q. Did you subsequently come down to Los Angeles to talk to officials here?

A. Well, first, I called, I think, Mr. Foster or somebody in Los Angeles that was above Mr. Kelly. I called him but he was going fishing and didn't want to bother with me.

Q. What did you do then?

A. So then, Friday, after I had left my station and they had put me out, I came down to Mr. Dinkins' office, and that was the vice-president of the company, and talked to him for about 15 minutes. And when I walked in he said, "How are you, Mr. Wagner?" He says, "How are things in Taft?" I said, "Well, they are not so good. I don't have any Richfield station any more." So then he wanted to know what it was all about, so he referred me to Mr. Bill King, so I had a long talk with Mr. King and we talked for about three hours.

[fol. 2336] Q. Did you explain to him why you were handling Quaker State oil, Mr. Wagner?

A. Yes. There was Pennzoil, too. I handled Pennzoil, too.

Q. Did you tell him about your Telephone Company account?

A. Yes, sir. I told him about that account, and he said, "Well, that's a pretty nice account." He says, "I think I would be tempted to hide a little of that under my self, too."

The Court: They were all sorry, weren't they? How did you end up?

The Witness: Well, you see, when I went down to see Mr. King, I wasn't bitter or nothing, because, after all, I am young. I knew I could make a living, but the thing why I went down to see about it was that I wanted to have a clean record. I didn't want them to be carrying anything on my record.

The Court: You went down, and what did they say about the reason?

The Witness: He didn't give me no reason.

The Court: I see.

By Mr. Greer:

Q. Did you have any intangible property in accounts receivable at the time you were discontinued?

A. I had out, I would say, $1500, and when I wound up [fol. 2337] I think I still had about $700 on the books.

Q. Were you able to collect those accounts?

A. No, sir; still got them.

Mr. Greer: The witness is with you.

Cross-examination.

Mr. DeMartini: The first station lease was dated January 14, 1942, on Form 542, bearing print date 2-41. Will it be so stipulated?

Mr. Greer: So stipulated.

Mr. Dixon: Was there a minimum rental?

Mr. DeMartini: And the minimum rental is $110, with one cent over 10,500 gallons per month.

By Mr. DeMartini:

Q. I will show you an amendment, dated January 17th, 1942, which calls for a rental of $110 flat. That is your signature, is it not, Mr. Wagner?

A. That's right, sir.

Q. And an amendment dated October 3, 1942. I am sorry. I will have to go back of this.

The first amendment was made May 8, 1942, and provided for a rental of $110 flat. The second was dated October 3, 1942, and called for a rental of $75 flat, and a third amendment, dated January 30th, 1942, which called for a rental of $1 flat per month, and an amendment dated March 29, 1944, which called for a base rental of $75 per month, [fol. 2338] with a gallonage rental of one cent over 7500 gallons per month, or one cent a gallon. What was the reason for those amendments?

A. Gas rationing.

Q. So your rent was reduced as your business decreased because of gas rationing?

A. That's right.

Mr. DeMartini: I think, to complete the record, because you have a notice of termination in there, Mr. Greer, I had better show that there was a subsequent lease dated January 1, 1946, bearing print date 11-44, calling for a rent of $75 per month, with one cent per gallon over 7500 gallons per month.

Mr. Greer: Yes, sir. Do you have the lease here?

Mr. DeMartini: Is it stipulated that was the last lease and the lease which was terminated by the notice? Is that correct?

Mr. Greer: So stipulated.

By Mr. DeMartini:

Q. In the interim period, Mr. Wagner, you were in the service, weren't you?

A. Yes, sir.

Q. And there were leases executed with Alice Wagner, who is your wife, is that correct?

A. My wife.

Q. And Frank M. Wagner?

A. That's my brother.

[fol. 2339] Q. Now, it is true, is it not, that at or about the time of termination, you had some controversy with the City of Taft over the washing of cars, which violates an ordinance of the City; is that correct?

A. I believe you will find you have a letter on that where the City held that there was no responsibility there on me at all.

Q. There was some discussion with Richfield with respect to that, was there not?

A. I believe there was.

Q. Didn't they give that as one of the reasons for termination?

A. No, they never said that was a reason.

Q. How much of this competitive oil did you sell a month?

A. Well, I would say—according to Richfield oil?

Q. Yes.

A. I would say I would sell one quart to ten.

Q. You would sell one quart of the competitive oil to ten of Richfield?

A. Yes, sir. I just guess at that figure. I can't bring it right down. I never kept the figures on it.

Q. How long did they object to your selling this competitive product?

A. Ever since I have been in there running a Richfield [fol. 2340] service station.

Mr. DeMartini: I think that is all.

The Court: Step down, Mr. Wagner.

Mr. Hall: Just one moment, your Honor. There was a document we want to look at.

Mr. Greer: Just one more question, your Honor.

Redirect examination.

By Mr. Greer:

Q. Mr. Wagner, with reference to the question asked you about the reduction of your rent during gas rationing, do you happen to know whether or not Richfield's rent was also reduced during that period?

A. I do not know.

Mr. Greer: Will counsel stipulate that it was?

Mr. DeMartini: I will not. I don't know.

I will stipulate that we had a number of reductions during that period.

The Court: The main point is this: He is not interested in the other reductions, but is in this. Your records will probably show.

Mr. Paradise: We will be glad to ascertain it.

The Court: Pardon?

Mr. Paradise: We will be glad to ascertain it, your Honor, and advise counsel.

[fol. 2341] The Court: I hope your landlord had the good sense to do that, because I know of some fellows who lost valuable leases because they did not. One of them, right in Palm Springs, and I forget what company it was, would not make a reduction in the rent, so the fellow moved out and bought a place across the street, and built a bigger unit. I don't think it was yours. I think it was Texaco, in Palm Springs, just as you leave.

Mr. Paradise: It may be that this was a fee-owned station, unless counsel has some information to the contrary, but we will find out.

The Court: All right. While you were gone, was it your wife and your brother who ran it?

The Witness: That is right.

The Court: Or her brother?

The Witness: My brother.

The Court: Your brother it must have been, because the name is Wagner. Did they run the station while you were gone?

The Witness: Yes, sir.

The Court: Then the reduction was not on account of your being in service, it was on account of rationing?

The Witness: The reduction was because of the gas sales. They only delivered so much gas.

The Court: Do you know whether they kept the station [fol. 2342] open all the while you were gone?

The Witness: Yes, sir.

The Court: I mean regular hours?

The Witness: Yes, sir.

The Court: They didn't curtail the hours of opening?

The Witness: The only thing is we ran out.

The Court: And if they ran out of gas, they put up the "Sold Out" sign?

The Witness: I only sold gas one hour a day.

The Court: What did you do with the rest of the time?

The Witness: That would give us time to lube cars, because in one hour I would sell all the gas I had.

The Court: You would sell your quota?

The Witness: Yes, sir, and we would lube cars, fix tires, and so forth.

Mr. Greer: Will you mark this, please?

The Clerk: Government's Exhibit 21-A, marked for identification.

(The document referred to was marked Plaintiff's Exhibit 21-A, for identification.)

Mr. Greer: Your Honor, the government offers this exhibit 21-A, for identification, in evidence. It is a letter which purports to be from the Mayor of the City of Taft, California, to the defendant corporation, which was returned by the defendant under the second subpoena duces [fol. 2343] tecum, paragraph 2, item 40.

Mr. Paradise: Objected to as immaterial.

The Court: Let me see what bearing it has.

Mr. Greer: We think it is pertinent under the cross-examination, your Honor.

The Court: We will see. We will see what the Mayor said.

(The document was handed to the court.)

The Court: I don't know. If any defense were based upon the letter to which the Mayor refers, I think this might have bearing. Until that appears in the record, I don't know. I haven't heard anything about any excuse having been given other than what the witness has testified to as the reason for the severance. Let this keep its number for identification. If anything should develop later on relating to this, it might become material, but in the present state of the record, I think it is immaterial. Objection sustained.

Mr. DeMartini: Are you through?

Mr. Greer: Yes.

Recross-examination.

By Mr. DeMartini:

Q. One further question. You spoke of an investment of $4,000 in the service station. What did that consist of?

A. That consisted of all equipment that wasn't on the [fol. 2344] lease. The fellow that I bought from had quite a lot of equipment, a lot of tools, and he had an awful good stock, he was a good service station man. His name was Mr. Humphreys. He is a railroad man today, and he had a terrific stock. I paid $2600 to get in there.

Q. That consisted of stock and movable equipment, tools and grease guns, things of that nature; is that correct?

A. That's right.

Q. By "stock," I mean inventory?

A. Yes, sir.

Q. Of gasoline products?

A. Well, mostly stock, and lots of equipment, tools, jacks.

The Court: Those became handy, didn't they, when you went in there?

The Witness: No, because we had too many service stations closed at the time, you see, there was only one out on G-10, and there was no demand for any of those things. The junk yards are full of them. I just combined two stations into one. That station was closed, I don't know how long. They can give you the figures on it.

Mr. DeMartini: That is all.

Mr. Greer: Stand aside.

(Witness excused.)

[fol. 2345] The Court: Call your next witness.

Mr. Somerville: The government calls Mr. Sheldon.

Verlin G. Sheldon, called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

The Clerk: What is your name, please?

The Witness: Verlin G. Sheldon.

The Clerk: The first name?
The Witness: V-e-r-l-i-n, Verlin.
The Clerk: And the last name?
The Witness: S-h-e-l-d-o-n.
The Court: Now, who is doing this?
Mr. Somerville: We have some question on documents, your Honor.
The Court: I thought you had disappeared. You boys switch on me so often, I forget who is who.
Mr. Greer: Will you mark this for identification, please?
The Clerk: Government's Exhibit 22, marked for identification.
Mr. Dixon: Perhaps you had better make it 17-C, please. Oh, what was the last one? Will you connect it up with the [fol. 2346] last one?
The Clerk: Government's Exhibit 21-B, for identification.
Mr. Dixon: Yes, that ties up the letter.

(The document referred to was marked Plaintiff's Exhibit 21-B, for identification.)

Mr. Greer: Your Honor, in connection with the Government's offer of its Exhibit 21-A, for identification, we have another letter to Mr. J. T. Foster, an official of the Richfield Oil Corporation, from Frank Kelly, who is identified in the evidence as the merchandiser in Taft, with reference to the last letter, your Honor, which was rejected in evidence as 21-A, and I wonder if your Honor would consider this letter and see if that prior exhibit would not be admissible.
The Court: This is not in yet.
Mr. Greer: We offer that in evidence, your Honor. We offer both letters together.
The Court: That is getting on the bandwagon. You want this other one to take a ride on the coattails of this one. Let's take a look at it and see what it is.
This is clearly admissible. I will allow this.
Mr. DeMartini: No objection to that.
Mr. Paradise: There is no objection to that.
The Court: No. But let me look at the other one in the light of this.
[fol. 2347] I think there is one paragraph in the letter

that bears upon the preceding letter, and because Kelly is complaining that he was told by the City Council not to create a hazard, and the Mayor says that their idea was not to stop him from washing cars, as Kelly wanted to do, but to provide him with a means to run off the water. I think it bears on it. I will overrule the objection in the light of Exhibit 21-B, and I will allow 21-A to go in.

The Clerk: 21-A and 21-B in evidence.

(The documents referred to, marked Plaintiff's Exhibits 21-A and 21-B, were received in evidence.)

By Mr. Somerville:

Q. What is your name, please?

A. Verlin G. Sheldon.

Q. Where do you live?

A. Portland, Oregon.

Q. Mr. Sheldon, have you ever operated a service station bearing the Richfield colors? Have you ever operated a service station handling Richfield gasoline?

A. Yes, sir.

Q. When did you first operate such a station?

A. Approximately in the spring, perhaps in March in '38.

Q. In '38?

A. '48. I beg your pardon.

Q. What was the location of that station?

[fol. 2348] A. 7510 North Lombard, Portland, Oregon.

Q. Mr. Sheldon, I am interested in knowing, did you have a lease concerning that station with Richfield?

Mr. Paradise: You mean a lease from Richfield?

By Mr. Somerville:

Q. A lease from Richfield to that station?

A. Yes, I did.

Q. I am interested in knowing how you obtained that lease. Would you tell us, did you seek out someone from Richfield, or did someone from Richfield seek you out with respect to executing that lease?

A. I wasn't so much interested in the lease until after I decided to purchase the station.

Mr. Paradise: We can't hear you. I am sorry.

The Witness: I wasn't so much interested in the lease until after I decided to purchase this particular station.

By Mr. Somerville:

Q. Did you make inquiry concerning the desirability of service station locations?

A. I did that.

Q. Did you determine that you wanted to lease this particular station?

A. Well, I had a very good friend who was a merchandiser for Shell Oil, and going at it in a business sense, I had this man on the lookout for me. I contacted some Texaco stations that were in the vicinity of my home, and with the thought in mind of their location and also the [fol. 2349] location of my home, and by dropping in on different stations from time to time and studying their business and their business methods, I finally decided that this one certain station could be made into a fine station. It was within walking distance from home, so I dropped in and asked the man one day if he ever had any thought of selling his station.

Q. You are talking about the man who was operating that particular station?

A. That's right.

Q. What was his name?

A. Andy Stover.

Q. Did you ask if he would sell it?

Mr. Paradise: I object to that, if the court please, as purely hearsay, unless it is tied up with this defendant.

Mr. Somerville: I think it has a bearing upon the issues in this case, counsel. The manner——

Mr. Paradise: It may have a bearing, but it is incompetent.

The Court: It must have a closer bearing than that. Let's get down to the transactions. I will sustain the objection.

Mr. Somerville: May it be stipulated, counsel, this is a service station lease between Richfield, as lessor, and V. G.

Sheldon, as lessee, on Form 542, print date 3-46, dated [fol. 2350] March 9, 1948, covering the premises at 7510 North Lombard Street, Portland, Oregon, specifying a flat minimum rental of $50 per month.

Mr. Paradise: So stipulated, except that it is not a flat minimum. It is a flat rental.

Mr. Somerville: A flat rental.

Mr. Paradise: It can't go higher.

The Court: All right.

By Mr. Somerville:

Q. How long did you operate this particular station, Mr. Sheldon?

A. About, until the middle of May '49; until the 1st of May in '49.

Mr. Paradise: We can't hear you.

The Witness: About the 1st of May in '49.

By Mr. Somerville:

Q. Did you subsequently enter into a lease on another service station with the Richfield Oil Corporation?

A. Yes, sir.

Q. What was the location of that station?

A. 7434 North Vancouver, Portland.

Q. Did you terminate your lease on the previous station?

A. I did that.

Mr. Somerville: May it be stipulated, counsel, that this is a lease between Richfield and V. G. Sheldon, on Form [fol. 2351] 542, print date 3-46, bearing date of March 9, 1948, covering the premises at 7434 North Vancouver, Portland, Oregon, and specifying——

Mr. Paradise: That is the lease you just discussed.

Mr. Somerville: I am sorry, counsel. A lease dated June 10, 1949, between Richfield, as lessor, and V. G. Sheldon, as lessee, on Form 542, print date 8-46, covering the premises at 7434 North Vancouver, Portland, Oregon, and specifying a minimum rental, or a monthly rental of $50 a month, plus one cent per gallon in excess of 5,000 gallons.

Mr. Paradise: So stipulated.

The Court: All right.

By Mr. Somerville:

Q. Mr. Sheldon, with respect to this station, are you still operating it?

A. I am.

Q. And at any time, sir, did you handle any competitive oil at this station?

A. At times.

Q. What oil was that? What brands of oil?

A. Mostly Pennzoil and Quaker State.

Q. Did you have any particular reason for handling that?

A. At the time I started the new station, there wasn't no competitive oils in there, and I found, in starting in in the summer months, that tourists would come out to the [fol. 2352] station island, and I would greet them in the regular manner, and before they would let me approach them, they would come at me with the question, "Do you have Pennzoil?" And I said, "No." The answer would be, "I need an oil change, but I must have a station that has Pennzoil," and he would drive on.

Q. So you began stocking some quantity of it?

A. That's right.

Q. Where did you keep that oil?

A. Well, I have no storage room anyway. I was keeping it in the cloakroom.

Q. Was there ever any incident in which a Richfield representative called your attention to the fact that you had that oil?

A. Yes, Gene Ranes did.

Q. When did that occur, sir?

A. Oh, about sometime in the summer of '50, I believe.

Q. What did Mr. Ranes say concerning that oil?

A. He told me that Mr. Lalande, another company man, had found it in there and requested him to see that I got rid of it.

Q. What did you then do with that oil?

A. I had a small tool box. I put part of it in there, and put the rest of it in my car.

Q. Mr. Sheldon, did you ever give instructions to any [fol. 2353] competitive oil man to make deliveries at your home?

A. I gave them instructions not to—that I would rather pick up the oil myself than have them deliver it.

Q. Did you give any similar instructions with respect to TBA products, competitive TBA products I am referring to.

A. That would be other than Richfield approved?

Q. Yes, sir.

A. Not that I remember.

Q. Would you tell the court, please, whether there was any Richfield representative that periodically called on your station?

A. Yes, sir; at least once a week.

Q. Would he inspect your stock?

A. That was part of his business, to check my stock, see that I had adequate grease and oil on hand, and that the maintenance was in order.

Q. Have you ever handled any competitive batteries?

A. At one time.

Q. What brand of batteries were they?

A. Nickelite.

Q. Was there any particular reason for your handling those batteries?

A. Two. One reason was that my adjustments were so very poor on Goodyear. One of them turned in to the company for an adjustment, and I got that adjustment back 90 [fol. 2354] days later, but the man,—I had installed a new battery on it in the 90 days' time and he had left for Minnesota, so that adjustment was on me, and my adjustments have all been very slow and hard to get, and with the competitive line of batteries I was allowed to make my own adjustments on the spot, and any time I called the supplier, he, in turn, reimbursed me within 24 hours.

[fol. 2355] Q. And what was the other reason for handling those batteries?

A. Not that one battery was any better than the other, but the other battery had a better sales approach.

Q. And that was the Nikolite battery?

A. That is right.

Q. Did you display these prominently in your station?

A. I did that one time, your Honor, yes, sir.

Q. Were you visited at any time by any Richfield representatives with respect to that station?

A. This happened in the early winter, I would presume in January of '50. It was through the gasoline shortage—no, it was not. But it was through the peak. We were practically out of business in January '50 for 30 days on account of snow. It was four or five feet deep. Mr. Ranes come in and told me that I would have to get my batteries out and dispose of them, that he had been notified from Seattle that they were there and I would have to dispose of them.

Q. What did you do about it?

A. They were selling pretty fast. I ended up with one to set back on the shelf until it went.

Q. And then you did not buy any more?

A. That is right.

By the Court:

Q. Do you still have customers that like Nikolite bat-
[fol. 2356] teries?

A. Occasionally.

The Court: What do you do?

The Witness: I pick them up, telephone the jobber and he brings them down within 15 minutes.

By Mr. Somerville:

Q. But you do not carry any in stock?

A. I do not stock them.

Q. Have you ever been interested, sir, in handling competitive tires?

A. I would be interested in handling any competitive merchandise where I could get a wider margin of profit.

Q. On any occasion have you inquired concerning competitive tires of the manufacturer or manufacturers' representative?

A. At one time—I couldn't tell you the date—I clipped a coupon out of a paper from an advertisement of Gates Rubber and sent that in direct to the company. I believe their home offices was Denver.

Q. And following that occurrence did you receive any visits from any representatives?

A. Yes, that I did. That seems to have been also sometime in the summer of '50, in the later summer, I would say in August. I believe it was after my vacation.

Q. Who was that? Was that a representative from the [fol. 2357] Gates Rubber Co.?

A. That was a representative directly from the Gates Rubber Co. I was unfortunate that day in having an amount of work to do, and when I have a customer he comes first. And after the man introduced himself I just left him stand.

Q. Did he make any attempt to make a sale of tires?

A. He was a gentleman, and seeing that I had more work than I could do, and after standing around probably half an hour, he came and told me, he said, "I see that you are too busy to talk with me. I can't wait any longer. I must be on my way," I believe to Spokane. "I will see you the next opportunity I get."

Q. Was there any Richfield representative present at the time?

A. Yes, Mr. Ranes was there.

Q. And did you observe whether Mr. Ranes and this gentleman from the Gates Rubber Co. were conversing?

A. They were. I was so busy I didn't have time to see what the conversation was about, but I did see them talking together.

Q. Did you subsequently learn through Mr. Ranes of any conversation with this gentleman that was there?

A. I presume I did, but I couldn't make an honest, true statement on that. It would be more of a case what was probably said. I couldn't make a definite statement.

[fol. 2358] Mr. Somerville: I think that will be all.

The Court: All right, cross-examine.

Cross-examination.

By Mr. DeMartini:

Q. Mr. Sheldon, you changed your location from the first station to the second station. I don't remember the locations. What was the reason for that?

A. The reason for that, I told the Richfield representa-

tive at that time, Armond Lalande, that I would buy out the station on Lombard for only one reason.

Q. Is that the second station?

A. That is the first station.

Q. What was the conversation?

A. That after I proved myself as a station operator, I wanted a decent station, or otherwise I was not interested in doing business with the company.

The Court: How long did you keep the first station?

The Witness: Less than a year, your Honor.

The Court: And then you changed?

The Witness: That is right.

By Mr. DeMartini:

Q. And they moved you to the second station, which was on the other side of——

The Witness: That is right.

The Court: In the same part of town?

The Witness: It was about four miles due east.

[fol. 2359] The Court: Across the river?

The Witness: No, just straight east up the peninsula.

The Court: All right.

By Mr. DeMartini:

Q. That move was made in order to get you a better advantage, a better service station, is that correct?

A. I had growing pains.

Mr. DeMartini: Thank you, sir.

The Court: All right.

By Mr. Somerville:

Q. Did you state, sir, that you were currently operating that same station.

A. I never operated both stations at the same time. Perhaps 30 days lapsed between the termination of one lease and the beginning of another.

The Court: What are you operating now?

The Witness: I am operating 7434 North Vancouver.

The Court: Step down. Let us have a short recess. Have

you gotten through with most of your out of state witnesses?

Mr. Dixon: I think we have two left, your Honor. We can finish.

The Court: That is all right. I was just wondering why you put on a Taft man.

Mr. Dixon: Oh, yes.

The Court: That is all right.

(Short recess.)

[fol. 2360] The Court: All right. Call your next witness.

Mr. Somerville: The government calls Mr. Ransom.

Gaylord Ransom, called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

The Clerk: What is your name, please?

The Witness: Gaylord Ransom.

The Clerk: The last name, the spelling?

The Witness: R-a-n-s-o-m.

By Mr. Somerville:

Q. Mr. Ransom, where do you reside?

A. Walla Walla, Washington.

Q. What business or occupation are you in?

A. I am with the Gates Rubber Company of Denver.

Q. How long have you been with the Gates Rubber Company?

A. Two and a half years.

Q. What positions have you held, chronologically?

A. To start with as a T. M. E. man, which is Tire Market Extension, for a year.

Q. What are the duties of that particular branch?

A. T. M. E. is to establish new dealers.

[fol. 2361] Q. Then what was your next position?

A. Well, I became district manager.

Q. As district manager, what were your duties, or are your duties?

A. Well, the duties are to service the accounts that have been established by the T. M. E.

Q. And that is your present position?

A. That's right.

Q. Now, in your position are you familiar with the products that are handled by the Gates Rubber Company?

A. Reasonably well.

Q. What products are manufactured by the Gates Rubber Company?

A. Well, we manufacture tires, and tubes, and floor mats, for automobiles, radiator hose, and our fan belt. We also handle a battery. We don't manufacture it, but it is sold under our trade name, as Gates.

Q. In your position as T. M. E. man or Tire Market Extension man,——

A. Yes.

Q. —did you contact service station outlets with respect to the sale of these products?

A. That's right, contacted outlets.

Q. What are your duties as district manager in that respect?

[fol. 2362] A. Well, now, these outlets that are established in my district, I service them, and also establish new outlets in favorable places, that is, desirable accounts, which I think would be desirable.

Q. What is the area under your particular jurisdiction?

A. Well, I have seven counties in Oregon along the Columbia River, from Seaside as far as the Dalles, which is in Sherman County. Then there are about 20 counties in Washington west of the Columbia River, with the exception of the area adjacent to Seattle, which is not in District 103.

Q. And in respect to Idaho?

A. I have nothing in Idaho.

The Court: Your account is——

The Witness: West of the Columbia River.

The Court: What is that?

The Witness: The counties west of the Columbia, sir.

The Court: But are they east of the mountains?

The Witness: On both sides of the Cascades.

The Court: How?

The Witness: On both sides of the Cascades.

The Court: On both sides of the Cascades?

The Witness: Yes, from Centralia south to the Oregon border on the west side of the Cascades.

By Mr. Somerville:

Q. Would you please tell the court where shipments on [fol. 2363] tires and fan belts are received in the states of Oregon and Washington?

A. Well, the Portland warehouse serves Oregon and Washington and part of California with our tires, tubes and batteries.

Now, the fan belts are handled in a different manner. They are handled by a jobber, and the jobber in the district I am in is George Lawrence of Portland.

Now, I am not familiar with the fan belt set-up, but I do know that he services most of the territory that I cover as a jobber for the fan belts, but we do not have any jobbers in the tire, tube and battery division. That is all handled direct from the warehouse.

Q. Now, with respect to tires and tubes and fan belts, as I understand it, those items are manufactured at Denver?

A. That's right.

Q. And they are shipped to the warehouse in Portland?

A. Well, the tires and tubes are shipped to the warehouse. Now, the fan belts would be shipped direct to the George Lawrence Company.

Q. And on the tires and tubes are they sometimes shipped directly to service station dealers?

A. They are in the event that the service station buys a truckload or a carload.

Q. What determines the warehouse inventory, antici- [fol. 2364] pated orders, or——

A. Well, anticipated needs for the area that it services.

Q. Do you know the frequency with which tires are being shipped into that warehouse?

A. Well, under normal conditions, we get several carloads a week, but now during this emergency, if we get one carload a week, we have done well.

Q. And how rapidly do they move from the warehouse?

A. Well, our warehouse inventory is nil at the present

time, that is, in Portland, and I presume it would be here in the city as well.

Q. And during a normal period?

A. During a normal period we keep it up to a necessary inventory to take care of our needs.

Q. That is a company warehouse, is it?

A. Oh, yes, a company warehouse.

Q. Are you familiar with the Goodyear tires, and batteries, and tubes?

A. Well, I often see them, if that is the answer.

Q. Are your products comparable in quality and size to those?

A. They are better in quality, sir.

Q. They have as good a guarantee?

A. Better.

Q. Well, you do know what the guarantee of Goodyear is? [Vol. 2365] A. Yes, I do.

Q. Now, with respect to service station accounts, do you recall ever having made any sales attempt, or an attempt to set up a distributor for Gates tires at a service station operated by Verlin G. Sheldon, on Vancouver and Lombard, in Portland, Oregon?

A. I do.

Q. Were you in the court room earlier this afternoon?

A. I was.

Q. Did you observe Mr. Sheldon on the stand?

A. I did.

Q. And was that the man who was operating the service station?

A. Yes.

Mr. Paradise: That is the same Mr. Sheldon who is operating an L-O station in Portland, Oregon?

Mr. Somerville: Yes, it is.

By Mr. Somerville:

Q. Now, with respect to this particular station, what occasioned your call at this particular station?

A. Well, it was approximately a year ago the Gates Rubber Company obtained a mailing list of all the prospective outlets for their products, and this was mailed out to them,

and Mr. Sheldon apparently had answered the questionnaire, or answered the card that was enclosed to have a representative call on him. I, in turn, was advised from [fol. 2366] Denver, of course, along with many others that had answered this mailing list that we sent out.

Q. And so in this letter that went out,—have you seen the letter?

A. Yes.

Q. Did that outline somewhat the Gates tire deal?

A. Well, very meagerly. It just asked the prospective dealer if he would be interested in a Gates representative calling, and there was a little sales promotion enclosed in the letter, but it was limited.

Q. Approximately when did you make this call on Mr. Sheldon?

A. Well, it could be a year ago today. It was in the middle of May.

Q. At the time that you made that call, did you approach Mr. Sheldon with some sales talk on tires?

A. Yes, I was able to speak to Mr. Sheldon, oh, in between jumps, you might say. He was busy. But I did start the sales presentation to him.

Q. Did you tell him that you were calling in response to his letter?

A. Oh, yes.

Q. Was there anyone else present at that time?

A. Yes, there was a Mr. Elliott with me, which is the [fol. 2367] manager of our largest dealer in Portland. I took Bob Elliott with me, thinking if we would set up this account, that it would be an associate of the firm of Elliott and Elliott. And there was also a representative of the Richfield Oil Company there.

Q. Did you complete your sales talk with Mr. Sheldon?

A. No.

Q. Did you have any conversations with this Richfield representative?

A. Yes. He saved me the trouble of finishing my presentation by announcing himself and his capacity with Richfield.

Q. What did he say?

A. Well, he says, "You boys are just wasting your time

here." He says, "I'm"—I think he said, "Ranes of Richfield Oil Company, and my job is to see that you fellows do not get your products into our outlets."

Q. And was Mr. Sheldon present during that conversation?

A. Yes, it was all in his service station.

Q. You don't know whether he was standing right by?

A. Oh, no, I wouldn't say that he was, but Mr. Elliott was with me.

Q. Did you make any further approach to Mr. Sheldon before you left?

[fol. 2368] A. Oh, yes. As I was going out, Mr. Sheldon in a low voice says, "Come back when he isn't around." And which I didn't do, although I suggested to Elliott that he call back.

Q. And the reason that you didn't call back was——

A. Well, it looked like a closed account, anyway.

Mr. Paradise: It what?

The Witness: It looked like a closed account, anyway, as far as we were concerned, one that we couldn't break into.

By Mr. Somerville:

Q. In view of the conversation with Mr. Ranes?

A. Yes, in view of the conversation with Mr. Ranes.

[fol. 2369] By Mr. Somerville:

Q. One thing I neglected to bring out on Gates batteries. Where are they manufactured?

A. They are manufactured in Salem, Oregon.

Q. Are they shipped to points in Washington and Oregon?

A. They are shipped to our warehouse and from there to the accounts.

Q. And from the warehouse they go to points in Oregon and Washington?

A. Yes, and wherever tires are sent.

Q. Does that include the State of Idaho?

A. Yes, Idaho and part of Montana and part of California.

Mr. Somerville: Thank you. I think that will be all.
The Court: Any cross-examination?

Cross-examination.

By Mr. Paradise:

Q. Mr. Ransom, the Gates Rubber Co. is rather a substantial company, is it not?
A. We are the sixth largest in the United States.
Q. As I understand it, that company has a net worth something in excess of $35,000,000.
A. Yes, very much in excess, I believe.
Q. How many sales outlets does the company have?
A. We have over 5,000 in the United States.
Q. Pardon me?
A. We have over 5,000 in the United States.
[fol. 2370] Q. I understood it was larger and that the figure was somewhere between ten to fifteen thousand accounts. Am I wrong?
A. I believe you are. I am speaking of the tire accounts now. We have other divisions such as industrial and the automotive, which I am not familiar with now.
Q. Do you as part of your sales operations call on the stations of Standard Stations, Inc.?
A. Oh, yes.
Q. To whom do you talk in those stations?
A. Talk to the manager.
Q. You understand when you go in there that the manager is a salaried employee of the Standard Oil Co.?
A. Not necessarily. I am not interested in his capacity.
Q. I did not ask you if you were interested. I was wondering if you knew.
A. No, I do not.
Q. You don't know. How long have you been in this business?
A. Two and one-half years.
Q. Pardon me?
A. Two and one-half years.
Q. Two and one-half years. Has it come to your attention, Mr. Ransom, that certain service stations on the Pacific Coast are owned by particular oil companies?

[fol. 2371] A. Yes, I have been made aware of that.

Q. Has it also come to your attention that certain service stations on the Pacific Coast are leased to certain oil companies?

A. Yes. Well, don't pin me down on that. I know the oil companies have their fingers on them. I don't know whether they are leased or owned or how they are controlled, but I do know the oil companies have their fingers on them. I like to put it that way.

Q. Has it come to your attention that the Richfield Oil Corporation, particularly, owns or leases particular service stations?

A. Yes, I know that they have their fingers on service stations, as well as others.

Q. You know also, do you not, that the Richfield Oil Corporation during the period in which you have been sales manager for this company has constructed service stations itself?

A. I don't know that they built or not.

Q. That is not within your knowledge?

A. No.

Q. When you go into a service station do you inquire of the service station attendant whether the oil company whose particular products are being sold in that station owns that station?

[fol. 2372] A. I at times will inquire if this is a controlled outlet.

Q. And when you are so informed, it is true, is it not, that you no longer consider that as a customer?

A. Well, we have gotten in where they were controlled.

Q. Sneaked in through the back door?

A. No, went right in the front.

Q. This conversation that you said you had with Mr. Ranes, he stated you were wasting your time there?

A. That is right. That is his words.

Q. You understood by that, that he meant that Richfield Oil Corporation either owned or leased that station?

A. Well, I took it that if Mr. Sheldon did take our tires it would cause him trouble.

Q. Pardon me?

A. I took it that if Mr. Sheldon did take our tires it would

cause him some trouble, if we were successful in selling tires to him.

Q. I do not think you answered my question, Mr. Ransom. Would you read it, Mr. Bargion?

(Question read by the reporter.)

A. Yes, that would have something to do with it. That would be their station.

Q. You understood that from what Mr. Ranes told you?

A. Yes.

[fol. 2373] Q. Did you not understand that you actually were wasting your time there?

A. Well, after the man told me so, I did, yes.

Q. And yet you nevertheless told Mr. Elliott to drop back there, anyway, even though you had knowledge that if he went back there it might be getting Mr.—what was his name—Sheldon in trouble.

No further questions.

The Court: Well, did you answer it?

The Witness: Pardon?

The Court: What was your answer?

The Witness: Yes. You mean the last question the gentleman asked me?

The Court: Yes.

The Witness: Yes, I suggested Mr. Elliott to go back and if he could sell him, all right.

The Court: I did not hear your answer.

Redirect examination.

By Mr. Somerville:

Q. What did you mean, Mr. Ransom, in your answer to Mr. Paradise's question, the company has their finger on the station?

Mr. Paradise: Oh, I think that is argumentative.

The Court: Well, go ahead.

A. I just meant that the company more or less controlled the station or owned or leased it or had something to do with [fol. 2374] it.

The Court: In some fashion?

The Witness: In some manner.

The Court: You were not interested in the relationship that existed between them?

The Witness: No, that is absolutely right.

The Court: But you had no particular desire to get the dealer in trouble?

The Witness: No, no. I was only promoting our stock.

The Court: In other words, the mere fact that the person said "no" did not prevent you from informing your man he might try, and where he might be in error sometimes, even if he bought one tire, isn't that your idea?

The Witness: That is right.

The Court: You were still promoting the—what did you call it?

The Witness: TME.

The Court: TME. Talk about alphabetical agencies, I see now the oil companies have gotten more limitations, even for marking deportment on their station agents.

In other words, you did not take the statement as final and just called in the hope that he might change his mind. If he said again, "no," why, there was no harm done, is that it?

The Witness: That is right. We even went back repeatedly after repeated no's.

[fol. 2375] The Court: I see. All right.

Mr. Somerville: Just one or two questions.

The Court: I didn't want any answer to stand without explanation. It was a pretty broad question. I didn't know whether you wanted it to stand that you deliberately seek to get a man in trouble, you know, by soliciting.

The Witness: Well, no.

The Court: So long as he did not buy, he would not get in trouble anyway.

By Mr. Somerville:

Q. Mr. Ransom, does the Gates Rubber Co. have any particular policy with respect to requiring your dealers to display products that are sold to them?

A. Well, we are hesitant to set up any account that won't put up our advertising and let the public know that they have our products.

The Court: But you would not decline to sell?

The Witness: Well, no, we wouldn't. But we are hesitant about setting up any dealer.

The Court: A regular account?

The Witness: Yes.

The Court: Regardless, if any man, no matter what station he is running, would call you up and say, "Look, I have a customer who wants one of your products," you would not tell him no?

The Witness: We would put it out through one of our dealers like this Froman dealer there, with Mr. Elliott. [fol. 2376] That would be through his account.

The Court: You would put it through him?

The Witness: Yes.

By Mr. Somerville:

Q. With respect to the outlet you were describing as owned by the company or leased, were you generally successful in selling them?

A. No, not generally.

Mr. Paradise: Now, wait a minute. You are asking for what type of account?

Mr. Somerville: Those that were referred to by you as leased or owned.

The Court: Well, he said no. It is a pretty broad question. He answered it just as broadly. All right.

By Mr. Somerville:

Q. You regard the Richfield stations as closed accounts?

A. Well, they are closed——

Mr. Paradise: Now, wait a minute. I object to the question.

The Court: That calls for a conclusion.

Mr. Paradise: Because there are two kinds of stations.

The Court: I was trying to bring it out by facts, not generalities. Let me decide whether it was a shut-out or a lock-out.

Mr. Somerville: I appreciate that, your Honor.

The Court: That is why I wanted to avoid the implication of the last question and get more details to see what [fol. 2377] he did when a man said "no" to him.

Mr. Somerville: I think he has developed that now. That is all.

The Court: All right, that is sufficient on that. We will put a period right there and stop it. All right. Step down. Call your next witness.

Mr. Somerville: The Government calls Mr. Ogburn.

The Court: Is he your last witness from out of the state?

Mr. Somerville: The last witness.

The Court: All right, let us hear him.

Frank Ogburn, called as a witness by the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: Frank Ogburn.

Direct examination.

By Mr. Somerville:

Q. What is your name, sir?
A. Frank Ogburn.
Q. Will you speak a little louder?
A. Frank Ogburn.
Q. Where do you live?
A. Portland, Oregon.
[fol. 2378] Q. What is your present business?
A. Landscape contractor.
Q. Have you ever operated a service station bearing the Richfield colors?
A. Yes, sir.
Q. And during what period of time?
A. March 1949 to March 1950.
Q. And where was that service station located?
A. Reedville, Oregon.

The Court: That is a town I never heard of. Where is that?

The Witness: That is between Beaverton and Hillsboro on the Tillamook Highway.

The Court: Oh, yes.

Mr. Somerville: The Government asks the following documents be marked for identification: 3-C operator's lease dated June 18, 1946 between Richfield Oil Corporation, lessor, and Raymond R. Mathis, lessee, covering the certain premises in Reedville, Oregon; a 3-C operator's sales contract dated June 18, 1946 between Richfield Oil Corporation, as seller, and Raymond R. Mathis, as buyer.

Counsel, there were no 3-C service station leases included with this group of documents. We have in our possession a 3-C service station lease that we have picked up from a source other than yourselves. May it be stipulated that this [fol. 2379] is a photostat of an actual 3-C service station lease?

Mr. Paradise: I have no objection to the photostat being used in lieu of the original, if that is what you mean.

Mr. Somerville: And a document, 3-C service station lease, dated June 18, 1946 between Raymond R. Mathis and Winifred I. Mathis, lessor, and Richfield Oil Corporation, lessee.

The Clerk: Will you hand me the document which is 22? Just a moment. Government's Exhibit 22 marked for identification is 3-C operator's lease. Government's Exhibit 22-A is the 3-C operator's sales contract, also marked for identification. The photostat of the 3-C service station lease is Government's Exhibit 22-B for identification. Do you have others here to be marked? Government's Exhibits 22-C, 22-D, 22-E and 22-F marked for identification.

(The documents referred to were marked Plaintiff's Exhibits 22, 22-A to -F, inclusive, marked for identification.)

Mr. Somerville: The Government asks that they be received into evidence. Is there any objection?

The Clerk: Are these admitted, your Honor?

The Court: They may be received.

(The documents referred to were marked Plaintiff's Exhibits 22, 22-A to -F, inclusive, and received in evidence.)

By Mr. Somerville:

Q. Mr. Ogburn, do you have or did you have any arrangements during this period that you were operating this serv-[fol. 2380] ice station with Mr. Raymond R. Mathis?

Mr. Paradise: Objected to as immaterial.

The Court: I can't tell what it is going to lead to. It is a preliminary question. Overruled.

A. You mean prior to the time I took the station over?

Q. Well, during the period that you operated the station what was the basis of your operation of the station? Did you have any arrangements with Richfield Oil Corporation?

A. No.

Q. Any contract?

A. I contracted with Mr. Mathis.

Q. Did you have an oral contract or a written contract?

A. At first it was oral and then it was written.

Q. When was this contract made?

A. Well, a month or two after I took the station over.

Mr. Paradise: Oh, I object to any——

Mr. Somerville: Counsel, these are preliminary questions. Richfield will be tied in here in a moment.

The Court: We are not going into details, just the beginning of the negotiations until it got to Richfield. Go ahead.

By Mr. Somerville:

Q. With respect to this arrangement were there any Richfield representatives present?

A. In the starting, yes, Mr. Schwab, when I first——

Q. Who was Mr. Schwab?

A. He was a district or a bulk operator or distributor [fol. 2381] of Hillsboro, Oregon.

Q. And where did these discussions concerning this arrangement occur?

A. Well, in my house and Mr. Mathis' house.

Q. Were you to operate the station for Mr. Mathis?

A. No, for myself.

Mr. Paradise: Now, I will object to this type of examination. He is calling for conclusions, of course. If there is any materiality to these conversations——

The Court: Yes, I will sustain the objection. He can tell. If that conversation is material, he can tell us.

By Mr. Somerville:

Q. What was said concerning the transaction?

The Court: What was said?

A. Mr. Mathis asked me to take the station over, as they were closing out the operator ahead of me. At that time Mr. Schwab, Mr. Mathis and I talked it over and conditions of operating the station were taken up at that time.

By Mr. Somerville:

Q. And what were those conditions?

A. Mr. Schwab at that time said that it was a policy to always—of Richfield Oil Corporation not to have other brand oil in the stations, and that part of the argument of the prior operator was because of the refusal to take the oil from the floor in the station to somewhere else or take it out. At that time Mr. Mathis and I agreed that we would take the oils, Pennzoil, Quaker State, and other oils out of [fol. 2382] the main station and into the lube room. Mr. Mathis—because I myself said that I desired to keep the off-brand oils, because it was a community station and was needed. He and I agreed to put it in a cupboard, which we prepared with doors on it, and there I kept it.

Q. Did Mr. Schwab say anything about Richfield's wanting or not wanting that oil?

A. Only the statement that it was policy not to have the operators carry it, if possible.

Q. Did you pay any rental for the premises?

A. I paid one cent a gallon to Mr. Mathis.

Q. And did you buy out the stock of the preceding operator at that station?

Mr. Paradise: Now, if the court please, I think there is enough testimony by Mr. Ogburn to show that this testimony is completely irrelevant and should all be stricken. There is no contract—pardon me.

The Court: Go ahead. I want to hear the last question preceding it. Read the last question.

Mr. Paradise: Oh, I am sorry.

(Question read by the reporter.)

The Court: Overruled.

Mr. Paradise: The basis of my objection, your Honor, was this: This man testified he has an arrangement with Mr. Mathis. He has no contract, oral or written, with Rich-
[fol. 2383] field Oil Corporation.

The Court: We will see. If it does not lead up to something with Richfield. So far we know that Richfield's representative was present and made some observation about their policy, and they reached some agreement on the policy. If that is all, I will probably strike it. Let us see where this leads.

Mr. Paradise: All right.

The Court: Go ahead.

The Witness: The last question was what?

The Court: The last question was answered, wasn't it?

The Reporter: No, your Honor, it was not.

The Court: Read it, please, Mr. Bargion.

(Pending question read.)

A. Yes.

By Mr. Somerville:

Q. Mr. Ogburn, did you produce in response to a subpoena any documents concerning the operation of the station?

A. Yes, I have a paper here on their inspection of my station from a Richfield man who comes around and inspects your station. At the present time it is all clear excepting an unauthorized sign.

Mr. Somerville: Will you mark this for identification?

Mr. Clerk: 22-G marked for identification.

[fol. 2384] The Court: All right.

By Mr. Somerville:

Q. Mr. Ogburn, did you buy gasoline and oil from Richfield Oil Corporation?

A. I paid for it directly to them, yes.

(The document referred to was marked Plaintiff's Exhibit 22-G for identification.)

Q. Did you buy——
A. Under the name of Mr. Mathis.
Q. And did you buy TBA products?
A. Yes, yes.
Q. From whom did you buy them?
A. Mr. Schwab.
Q. The Richfield commission bulk plant agent?
A. Right.
The Court: Other than this unauthorized sign, you had the Richfield colors and Richfield products?
The Witness: Right.

By Mr. Somerville:

Q. With respect to this document you have produced, which is "survey of service station operations" dated June 14, 1949 covering the premises at Reedville, Oregon, who is the person that signed this as Richfield representative?
A. That was the man that inspected the station.
Q. R. R. Froman?
A. Yes.
[fol. 2385] Q. Do you know what his capacity with the company was?
A. No, sir, I do not.
Q. And that is your acknowledgement there, "Frank H. Ogburn"?
A. That is right.

Mr. Somerville: We offer this in evidence.
The Court: It may be received.
The Clerk: 22-G in evidence.

(The document referred to was marked Plaintiff's Exhibit 22-G and received in evidence.)

By Mr. Somerville:

Q. Did you receive any other survey sheets from Mr. Froman or any other Richfield representative?
A. Yes. Mr. Froman, I believe, was just either advanced or his territory moved and another man came in. I got those, I believe it was about every three months they came around.

Q. Was the matter of unauthorized stocks the subject of discussions between you and Mr. Schwab and Mr. Mathis?

A. No, there was never any real discussion on it. As I recollect, there was never anyone ever asked me to take it down.

Q. Only the discussion concerning the products?

A. That is right. Well, I should say Mr. Froman said that if I had the sign down, I would have a clear record. [fol. 2386] Mr. Paradise: Who said?

The Witness: This Mr. Froman.

Mr. Somerville: Mr. Froman.

The Witness: Froman, or what is the name of the representative that ins-ected it? Froman I guess it is.

By Mr. Somerville:

Q. What was that sign, sir?

A. Pennzoil.

Q. And did you keep your competitive oil concealed?

A. Yes. As I stated, I had that behind cupboard doors in the lube room.

Q. What about TBA products, did you handle any competitive TBA products?

A. Yes. As it is stated, I bought some other products from what we call the pie wagon when he came by. I was not able to buy from Mr. Schwab because of delayed deliveries. I would take from the pie wagon and I would buy Fram filters and other items that I would need that Mr. Schwab did not handle.

Q. Where did you keep your authorized tires and batteries?

A. The majority of them, I kept them under a cupboard or at my house in the basement.

Q. I am talking about the authorized TBA products.

A. Oh, authorized. I kept them on the shelves in plain sight in my display. That is authorized.

[fol. 2387] Q. Did you keep your competitive tires and batteries on open display?

A. No. I never put a competitive battery in the window,

and most always I kept the stock, all except one tire in the rack, and the other at the home.

Q. What was your reason for putting those back?

A. The main reason was because of the attitude of Mr. Schwab towards my handling competitive merchandise.

Q. Did you ever buy any products from Christensen Oil Co.?

A. Yes.

Q. And did you ever leave any instructions with the salesman concerning the delivery of such products?

A. Yes. After I was there quite a while, Mr. Schwab's attitude seemed to be getting more and more desireful to my having that on the display, and instead of having them delivered to the station I had them delivered to my house.

Q. Did this attitude persist during the whole period from March 1949 to March 1950 that you were in the station?

A. It grew tremendously over that period.

Mr. Paradise: We should have facts. That is purely a conclusion of the witness.

The Court: No, no. He can tell whether it grew. Go ahead.

By Mr. Somerville:

Q. You started to go into the matter of the inventory [fol. 2388] that you had when you took over the station. Where did you get the inventory that you originally started with?

A. I bought it from the outgoing operator.

Q. And who was that?

A. Mr. Saucerman with a hookup there and Mr. Wilson, I believe, held the contract with Mr. Mathis, but in the process, Mr. Saucerman and Mr. Wilson worked it together.

Q. Did Mr. Saucerman have authorized products?

A. Authorized, yes.

Q. What were they, a full line?

A. What?

Q. A full line of authorized products?

A. Well, no, I wouldn't say it was a full line, but all he needed, all he felt he wanted.

Q. And did he have any competitive items?

A. Yes.

Q. Do you remember any of those?

A. Wel-, there were batteries and tires and Fram filters and oils, your Pennzoil, your Quaker State, Armstrong tire, A-C battery.

Q. Did you have any discussion with any Richfield representative concerning whether or not you had to purchase these items?

A. No.

[fol. 2389] Q. Did you have any discussions with anyone?

A. The only discussion that was ever brought in through the transaction of my taking over the station and receiving the inventory was that Mr. Mathis, and, I believe Mr. Schwab, also made the statement, that I didn't have to take anything except authorized Richfield products and TBA.

[fol. 2390] Q. What was your inventory? What was the approximate value of it?

A. I believe it finally wound up to be about $1600.

Q. Now, at the time you left the service station, did you sell your stock to someone else,—the succeeding operator?

A. I sold only the authorized gasoline and TBA, because he made the statement to me, after we had already taken the inventory, that he didn't have to take anything except authorized products.

The Court: What did you do with the unauthorized products? Move them away?

The Witness: Took them home.

The Court: What?

The Witness: I took them with me, and then I have used them myself, and I still have some of it.

The Court: Are you operating a station now?

The Witness: No, sir.

By Mr. Somerville:

Q. What sort of unauthorized products did you have at that time?

A. Tires and batteries, and the oil, and Fram filters.

Q. Were you able to sell the authorized products to Mr.—who was your successor?

A. Sears.

Q. Were you able to sell the authorized products to [fol. 2391] him?

A. The authorized, yes.

Q. And were you able to sell the unauthorized products?

A. I returned some of them to one of the men that handled the pie-wagon, with a 10 per cent discount, and I took the balance home, and I used them myself, and sold some to my friends, and still have some.

Q. What was the price at which you sold the authorized products to the new operator or the new dealer, with relationship to the price that you paid for them?

A. I sold them to him for around 1200, and myself I said sixteen. I bought them at sixteen, and I sold him what he took, and he made me a check for twelve.

The Court: $1200?

The Witness: $1200, yes.

By Mr. Somerville:

Q. On the authorized products?

A. On the authorized products.

The Court: What was the value of the other products, the other merchandise?

The Witness: Around $350.

The Court: You didn't have very much?

The Witness: Not very much, no.

By Mr. Somerville:

Q. Did you offer the competitive products to Mr. Sears at a discount?

A. Yes, I offered it to him, everything, at what I paid [fol. 2392] for it, and if anything was cheaper at the time, I would give it to him at the lowest price.

Q. Did you offer any of those competitive products at less than the prevailing price?

A. Yes.

Q. And did he take them?

A. No.

Mr. Somerville: I think that is all.

The Court: All right. How about the exhibits? Are they in?

Mr. Dixon: Yes, they are in, your Honor.

The Court: They are marked for identification?

Mr. Somerville: We offered them, your Honor.

The Court: All right.

Mr. Paradise: I object to their introduction. Have these been introduced?

The Court: They are already in.

Cross-examination.

By Mr. Paradise:

Q. Mr. Ogburn, have you ever made any written contract with the Richfield Oil Corporation?

A. No, sir.

Q. Have you ever made any oral agreement with the Richfield Oil Corporation?

[fol. 2393] A. No, sir.

Mr. Paradise: If the court please, I move that all of this witness' testimony be stricken, and, also, that the exhibit—well, I don't care about this exhibit with Mr. Mathis, that the Richfield Oil Company has a contract with Mr. Mathis.

We have already discussed, I think sometime last week, the question of the defendant's sales to the service station dealers which are not made pursuant to any contract, oral or written, and it was held that that matter was purely immaterial and not responsive to any issue.

The Court: But this is merely a station as to which the contract is with someone else. This man executes the contract and then, by virtue of an agreement entered into with the consent of Richfield, he is executing the contract. Richfield was present at the birth of this contract, and so it is merely illustrative of a different kind of deal, whereby the conditions are passed on to the operator, even though the operator is not tied by any contractual relation to Richfield. So it is not in line with the others. They are not go-

ing to open up the line I have excluded,—what did you call them? We gave them a name.

Mr. Dixon: The uncontracted stations.

The Court: —of the uncontracted stations. I am not going to allow them to open that up. When I make a ruling [fol. 2394] of that character, I am not likely to change my mind about it. But this is a station where the operator acts through an agent, and the company knows about it, and arranges for the agency at the very beginning, and he deals in the name of the agent. He does as he is told, and is marked up, and they know all the time that he is executing the contract for the agent.

By Mr. Paradise:

Q. Did you have any written contract with Mr. Mathis?

A. Yes, sir.

Q. Did you bring it with you?

A. No, sir.

Q. Weren't you asked to?

A. Yes, but I couldn't find it.

Q. When did you make it?

A. When did I make it?

Q. Yes.

A. It was a short period after; if I remember, in one or two months.

Q. What date would that be, approximately?

A. In '49, and it would be around in April or May. I went in in March, '49, and it was after that.

Q. In what manner did you purchase gasoline?

A. In what manner did I purchase?

Q. Yes. Is it not true that all purchases of gasoline [fol. 2395] and other petroleum products by you from Richfield were done in the name of Mr. Mathis?

The Court: He said so. Isn't that true?

The Witness: Yes.

The Court: That is what you have already testified?

The Witness: Yes.

The Court: Yes.

By Mr. Paradise:

Q. Do you know, Mr. Ogburn, whether or not Mr. Mathis requested Mr. Schwab to come to this station periodically with this form 205 and show this to you?

A. I understand that is a general procedure of the Richfield Oil Company.

Mr. Paradise: I think that that answer should be stricken.

The Court: No, that is all right. Could you be more specific? Do you know it was at his request, at Mr. Mathis' request?

The Witness: No, not at Mr. Mathis' request.

By Mr. Paradise:

Q. You don't know that Mr. Mathis requested Mr. Schwab to do this?

A. No.

The Court: He said, "No."

By Mr. Paradise:

Q. Mr. Ogburn, as nearly as you can recall, what were the terms of your contract with Mr. Mathis?

A. As closely as I can recall, they were made to follow [fol. 2396] the lines of his contract.

The Court: But you never saw his contract? Did he show you his contract?

The Witness: Yes, he did.

The Court: At the time when this other man from Richfield was present?

The Witness: At the time he was making his and my contract out.

By Mr. Paradise:

Q. This is a written contract you are talking about now?

A. That's right.

Q. Between you and Mr. Mathis?

A. That's right.

Q. Will you make an effort to find that contract and send it to us?

A. Can I?

Q. I say, will you?

A. Yes.

The Court: Do you think you can find it?

The Witness: Well, my wife and I both looked for it when I left, but we never found it, but I will look again.

The Court: It will be understood that if it comes in, no other identification than what appears on the face of it will be needed, and it may be offered by the defendant, if they want to.

[fol. 2397] By Mr. Paradise:

Q. It is your understanding that your obligation under that contract was to perform that contract to the same extent as Mr. Mathis was required to perform his written contract, between him and the Richfield Oil Corporation, which he showed you?

A. Yes.

Q. Is that correct? Do I correctly understand that?

A. There is one statement there, that in ours—yes, I believe it did.

The Court: All right.

Mr. Paradise: That is all.

The Court: Any redirect? You have to have the last word of the day and the week. Now, make it brief.

Redirect examination.

By Mr. Somerville:

Q. Did you say was the written contract any different, to your knowledge,—any different than the oral arrangements that were made prior to the written contract?

A. Yes, as I started to hesitate a minute before, we agreed on putting the oil in the cupboards.

The Court: He has already explained that. Nothing was said about that?

The Witness: No, that I could never have it.

By Mr. Somerville:

Q. Just one matter of clarification: There was a Mr. [fols. 2398-2401] Froman that made those surveys in your station?

A. There was another man, too, but I can't remember.

Mr. Somerville: That is all.
The Court: All right.
Mr. Dixon: Tuesday morning, Judge, is that it?
The Court: You may be excused.
The Witness: Thank you very much.

(Witness excused.)

The Court: The case will be continued until Tuesday morning, and, of course, we will adjourn until Monday morning.

(Whereupon at 5:18 o'clock p. m., Friday, May 18, 1951 an adjournment was taken until Tuesday, May 22, 1951, at 10:00 o'clock a. m.)

[fol. 2402] Tuesday, May 22, 1951. 10:00 A. M.

The Court: All right, gentlemen, cause on trial.
Mr. Alexander: The government calls as its next witness Mr. Robinson.

Albert Robinson, called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination:

The Clerk: What is your name, please?
The Witness: Albert Robinson.
The Clerk: R-o-b-i-n-s-o-n?
The Witness: Yes, sir.

By Mr. Alexander:

Q. Where do you live, Mr. Robinson?
A. I live in Phoenix, Arizona.
Q. What is the nature of your business?

A. Service station operator.

Q. Do you occupy a service station at 239 West Jefferson, under a written form of lease from the Richfield Oil Corporation?

A. Yes, sir, I do.

Mr. Alexander: Will counsel stipulate that this witness [fol. 2403] occupies a service station in Phoenix under a Form 542 lease, print date 11-44, executed the 30th of January, 1945, commencing January 27, 1945, and a second Form 542, executed the 31st of October, 1947, commencing November 1, 1947, covering the same premises.

Mr. DeMartini: So stipulated.

By Mr. Alexander:

Q. Mr. Robinson, when you took possession of this service station, what was the amount of the investment that you made?

A. Oh, around eight, nine hundred dollars.

Q. Will you describe to the court what was the nature of the merchandise that you purchased for this eight or nine hundred dollars?

A. It was mostly batteries. There wasn't very much accessories; a little oil and some gasoline. There was about 100 batteries in stock.

Mr. Paradise: We can't hear you, Mr. Robinson.

The Witness: It was mostly batteries, and very little gasoline, and very little oil, and a few accessories, but the extent of it was batteries.

By Mr. Alexander:

Q. Mr. Robinson, have you ever had any discussions with any of the Richfield representatives concerning the petroleum products that shall be handled by you at this station?

A. No.

[fol. 2404] Q. Calling your attention to about July of 1946, did you have any discussion with a Richfield representative in connection with the handling of petroleum products for the Gates Tire Company account?

A. Yes.

Q. Will you relate to the court the circumstances under which these conversations were held?

A. We were servicing the Gates Tire test fleet, and they were using Signal oil, and they would bring the oil up to our service station, and leave it in the back room there, Signal, and Mr. Gallaher came in and saw this Signal oil in the back room.

Q. Who is Mr. Gallaher, Mr. Robinson?

A. He is the city manager.

Q. Richfield's city manager?

A. Richfield, yes. He came in and he said, "What's that oil doing in there? Get that out of there."

I said, "It don't belong to me. It belongs to the Gates Tire test fleet."

That was the extent of that.

[fol. 2405] Q. Have you had any further discussions with Richfield representatives in connection with handling competitive petroleum products?

A. Yes. Later on, on the Armour account, they had their own. When I got the account they had their own oil. We sold the——

Q. Excuse me. About when did this take place?

A. Oh, I think it was in early '50. We got them on the gasoline account but not on the oil account. They had their own oil and they paid us so much a quart for servicing it. And we had their oil. Like on a week-end they would send up maybe 15 or 20 gallons of oil to work on the trucks and cars, and we had it in the back room like we did the Gates. And Mr. Gallaher came in, he made a survey of the station and he saw the oil in the back room. And he said, "What's that oil doing in here?" I said, "Mr. Gallaher, that is the oil for the Armour account. You knew that when we took it." He said, "Oh, I forgot about it."

Q. Nothing further was said, in connection with that oil?

A. No.

Q. Mr. Robinson, do you sell automotive accessories at your service station?

A. Yes, sir.

Q. From whom do you obtain these automotive accessories?

[fol. 2406] A. From the TBA man, Jack Dunbar.

Q. Have you had any conversations or discussions with any Richfield representatives in connection with the type or amount of TBA that you should handle at your station?

A. Oh, they had a——

Mr. Paradise: I can't hear you, Mr. Robinson.

A. They have a quota sheet and you are supposed to——

Mr. Paradise: Now, I object to that.

Mr. Alexander: I asked you have you had any conversations.

A. Oh, conversations.

Q. Have you had any conversations in connection with this matter?

A. On TBA?

Q. Yes, sir.

A. Yes.

Q. You have?

A. Yes, we have.

Q. With whom have you had those conversations and when?

A. I had a conversation with Mr. Gallaher about—it was not on the sale of the items or the purchase of them. It was on the display of them, to take out all unapproved products out of the display window and display canned oil, which we did.

Q. When would this have taken place, approximately?

[fol. 2407] A. '47, I think.

Q. 1947?

A. 1947.

Q. Have there been any subsequent discussions in 1947 in connection with this handling of TBA products at your station?

A. Yes, with Mr. Lempesis.

Q. Who is Mr. Lempesis?

A. I think he is a district merchandiser.

Q. For Richfield?

A. Richfield, yes.

Q. What was the nature of the conversation you had with Mr. Lempesis?

A. That we display Casite racks outside the service sta-

tion, and he came down and told us to take that Casite and put it in the back room because it was not an approved product. And also we had some car polish and a few other small items on the shelf in front, and we had to take it and put it in the back room, chrome bright and some of that stuff.

Q. Were you able to dispose of these products, having them in the back room?

A. Well, later on Casite became an approved product and we brought it out of the back room and put it up in front and disposed of it. The other stuff is still setting [fol. 2408] there.

Mr. Paradise: Mr. Robinson, you let your voice drop and we can't hear the tail end of your sentences.

The Court: I think if you will lean back.

A. Later on Casite became an approved product over there and we brought it out of the back room and displayed it and sold it.

The Court: You brought it out into the parlor, as it were?

The Witness: Yes.

By Mr. Alexander:

Q. Mr. Robinson, have you ever had any discussions in connection with the handling of fan belts at your service station?

A. Yes. At the time when I was looking around for some fan belts, Goodyear fan belts from our TBA distributor wasn't available.

Q. About when was this, Mr. Robinson?

A. Oh, I think it was in '46. And I purchased quite a few brand belts from Automotive Sales, and Greyrock belts, and they had an orange colored sleeve on them. And we had them displayed all across the front inside. And Mr. Gallaher said: "Why are you buying those Gates belts?" I said, "They are not Gates belts. They are Greyrock." So he said, "I am going to call Dunbar and have him come down and put Goodyear sleeves on them," and which they did.

[fol. 2409] Q. Have you had any discussion with any Rich-

field representatives in connection with the handling of competitive batteries?

A. Yes, with Mr. Gallaher during the war when batteries were hard to get and we were buying any kind of a battery we could get hold of to supply our customers to take care of our trade. And we had on display Hobbs and Willard, and Mr. Gallaher came in and those batteries were on the display rack. And he asked me why I was handling off-brand batteries, why wasn't we handling Goodyear batteries. I explained to him they wasn't available. So he said, "Get on the ball and sell them Goodyear batteries because we make a percentage on every sale of Goodyear batteries." But it wasn't possible at that time. They didn't have them.

[fol. 2410] Q. Mr. Robinson, do you have employees at your service station?

A. I have two, two employees, my wife and my son.

Q. And these people receive their salary from you?

A. Yes, sir.

Mr. Alexander: No further question.

The Court: All right.

Cross-examination.

By Mr. DeMartini:

Q. What had you done prior to leasing this station from Richfield:

A. The Richfield station—I had a G.P. station down in Phoenix.

Q. Now, when you were installed in this station, to whom did you talk with Richfield?

A. Mr. Gallaher.

Q. Did Mr. Gallaher explain anything with reference to your maintenance of the station, and the fact that you were to handle Richfield products, and keep it open as we directed, and so forth?

A. Yes, sir.

Q. Those things were all told to you?

A. Yes.

Q. Now, you have testified that with respect to several [fol. 2411] instances the company complained of your han-

dling competitive TBA merchandise. I understand that in many of those instances you were told to get it out of sight; is that correct?

A. Yes, sir.

Q. And not to display it?

A. That's right.

Q. But you continued to sell it?

A. Yes.

Q. Although you kept it hidden; is that correct?

A. That's right.

Q. Do you recall an instance in which Mr. Shepard, who I believe was a merchandiser, and you called on Armour & Company in an attempt to endeavor to have them change to Richfield lubricating oils?

A. Yes, sir, I do.

Q. Will you describe that incident?

A. Well, they were at that time, when Mr. Shepard and I made that call, handling—they had Standard Oil, RPM oil, and we were down there and talked to the maintenance man down there and tried to sell them on our oil, but the price was so great in difference we couldn't do anything about it.

Q. So you didn't succeed in getting the account?

A. No. We had the account.

Q. You had the account?

[fol. 2412] A. We had the account on gas and washing, but not on oil.

Q. You were able to hold the account on gasoline?

A. Yes, sir.

Q. It is true that at various times merchandisers called upon you, and you executed the form which is referred to as "Survey of Service Station Operations"?

A. Yes, sir.

Q. I will show you the form, in case you are not familiar with it (handing document to witness).

A. Oh, yes.

Q. Will you tell me what was the occasion of executing these forms, Mr. Robinson?

A. Well, there were certain opening hours and closing hours. There was taking care of the restrooms, and the drive, and police them and clean them up, and posting approved signs, gas signs, and oil signs.

Q. And they would call periodically; is that correct?
A. That's right.
Q. I call your attention to the occasion of gasoline wars. You know what that term means, don't you?
A. Yes.
Q. I believe one occurred in the Phoenix area in and about February of 1950, and also in and about November of 1950; is that correct?
[fol. 2413] A. I think it is.
Q. Yes. It is true that the company, that is, the Richfield Oil Corporation allowed you additional discounts in order to meet depressed prices; isn't that correct?
A. That's right.

Mr. DeMartini: That is all.
The Court: Any further questions?
Mr. Alexander: No further questions.
The Court: Step down, Mr. Robinson.

(Witness excused.)

The Court: Call your next witness.

Dominic Delucchi, called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

The Clerk: What is your name, please?
The Witness: Dominic Delucchi.
The Clerk: Dominic, and how do you spell the last name?
The Witness: D-e-l-u-c-c-h-i.

By Mr. Greer:

Q. You pronounce that Delucchi?
A. That's right.
Q. Where do you live?
[fol. 2414] A. 838 Green Street, in San Francisco.

Mr. Paradise: Will you speak up, Mr. Delucchi, please?
The Witness: 838 Green Street in San Francisco.

By Mr. Greer:

Q. Where are you employed, sir?

A. I am employed with the Pacific Gas & Electric Company now.

Q. Just a little bit louder, please. Did you ever lease a service station outlet from the Richfield Oil Corporation?

A. Yes.

Q. When was that?

A. May 28th, in '49 to January 16, in '50.

Q. Where was that service station?

A. Arguello and Geary Streets.

Q. Was that service station in San Francisco?

A. Yes, sir.

Q. Who installed you in it?

A. Joseph Kintano.

Q. How do you spell that name?

A. K-i-n-t-a-n-o.

The Court: What is it?

The Witness: K-i-n-t-a-n-o.

The Court: Are you sure it is a "K"?

The Witness: Yes.

The Court: Then it would not be an Italian name?

[fol. 2415] The Witness: He was not Italian.

The Court: Then that is all right.

By Mr. Greer:

Q. Do you know what his official capacity was with Richfield?

A. District merchandiser.

Q. Did he give you any instructions at that time as to what products you were to handle?

A. Yes.

Q. What instructions were those?

A. Richfield products.

Q. Did he tell you where you were to get your tires, batteries, and accessories?

A. Yes.

Q. Where?

A. At the Massei Auto Supply.

Q. From the City Auto Supply?

A. Massei.

Q. How do you spell that?

A. M-a-s-s-e-i, as far as I can get it.

Q. Was the Massei Auto Supply Company the official TBA distributor for Richfield?

A. Yes.

Q. Mr. Delucchi, directing your attention to the month of July, 1949, do you recall a conversation with Mr. Kintano in that month?

[fol. 2416] A. Yes.

Q. Do you recall what you all talked about at that time?

A. Sure. Yes.

Q. What did you?

A. Well, we talked about the government's suit against the Standard Oil, and I told him that I would start selling whatever I wanted to.

Q. What did he say to that?

A. He said I couldn't. And I told him that I could because the government guaranteed that I could.

Q. What was his reply?

A. He says, "Oh, no, you can't." He says, "If you do, they just won't sell you any more gas."

Mr. Greer: The witness is with you.

The Court: What kind of a station was this, an L-O?

Mr. DeMartini: Yes, your Honor.

Cross-examination.

By Mr. DeMartini:

Q. You mean by they wouldn't sell you any more gas that they would put you out of the station?

A. That's what he told me, they wouldn't bring me any more gas.

Q. What did you do before you were placed in this sta-
[fol. 2417] tion?

A. I worked down at the fruit and vegetable market in San Francisco.

Q. Didn't you work for a dealer, an L-O operator there, at Bay and Fillmore?

A. Yes.

Q. And you asked for a station to operate yourself, didn't you?

A. That's right.

Q. And Mr. Kintano or someone in Richfield secured you this station; isn't that correct?

A. That's right.

Q. At the time you were installed, Mr. Kintano or some other Richfield representative told you that you would have to sell Richfield products, and keep the station open, and be merchandised, and wear uniforms?

A. That's right.

Q. At the time the station was opened, Mr. Delucchi, isn't it true that Mr. Kintano spent some time with you around the station working with you and in conducting neighborhood solicitation, and so forth?

A. Well, everything so far as the neighborhood solicitation was concerned, he helped me.

Q. Now, during this time that you were at the station you became ill for while, did you not? Weren't you in the hospi- [fol. 2418] tal for a while?

A. Yes.

Q. And didn't Richfield merchandisers keep the station open for you during that time ?

A. Certainly.

Q. They worked there and accounted to you for the sales?

A. That's right.

Mr. DeMartini: Will you mark this for identification, please?

The Clerk: Defendant's Exhibit K marked for identification.

(The document referred to was marked Defendant's Exhibit K, for identification.)

The Court: I think even Mr. Dixon will admit you are nice people.

The Witness: They were a lot of help for me.

By Mr. DeMartini:

Q. You were what is known as an L-O operator?

A. That's right.

Q. And you held a 542 lease?

A. That's right.

Q. I will show you a document entitled "Application for Employment" dated May 19, 1949, and ask you whether that is not your signature.

[fol. 2419] A. That's my signature, yes, sir.

Q. And that was executed at or before the time you entered into the operation of this station · is that correct?

A. It is, yes.

Mr. DeMartini: I will offer this in evidence.

The Court: It may be received.

The Clerk: Defendant's Exhibit K in evidence.

(The document, heretofore marked Defendant's Exhibit K, for identification, was received in evidence.)

Mr. DeMartini: I guess that is all. Thank you.

Mr. Greer: One minute, Mr. Delucchi.

Redirect examination.

By Mr. Greer:

Q. When was this period that you were ill, Mr. Delucchi?

The Court: Just a moment.

Mr. Greer: Will you read the last question?

(The question was read.)

A. In October.

[fol. 2420] By Mr. Greer:

Q. October of?

A. '49.

Q. October 1949. You say that during that period Richfield employees operated your station?

A. Yes.

Q. Will you tell the court what arrangements were made whereby they were paid?

A. They were not paid by me, anyway.

Q. You did not pay them anything?

A. No. I had two men there. Either Joe Kintano or another man came in the morning to check out the men and started them off, and that is all.

Q. Did you continue paying for petroleum products that were delivered to the station in that time?

A. Yes.

Q. Who handled your books?

A. They did, but whenever a check was to be made they take it home to me.

Q. The question I want you to answer, Mr. Delucchi is, were the Richfield men who took care of that station compensated during that time?

A. No.

Q. Where were you immediately prior to taking over that station?

A. At Bay and Filmore, a Richfield station.

[fol. 2421] Q. Who operated it?

A. Al Schrier.

Q. Were you an assistant to him?

A. Yes.

Q. Why did you leave there?

A. To get a station of my own.

Q. Did you express that desire to the Richfield people?

A. Yes.

Q. What did you tell them?

A. I want another station.

Q. How big an investment did you have to make?

Mr. Paradise: Now, this, if the court please, is all direct examination, not redirect.

The Court: Yes.

Mr. Greer: If your Honor please, this was opened up by the cross examination.

The Court: I am not interested whether they may have done a good Samaritan act. Probably they were interested too. If they did not run it they would not get a profit. They would have to shut down the station. I am not interested in that.

Mr. Greer: All right, sir.

The Court: They may be nice people, they no doubt are.

Mr. Greer: All right, your Honor.

The Court: We are not interested in that. We are not [fol. 2422] trying their charitable impulses. We are interested in violations of the antitrust laws. That is all we are interested in.

Mr. Greer: We have no further questions, your Honor.
The Court: All right, step down. Call your next.
Mr. Greer: Mr. Garrett.

JOHN GARRETT, called as a witness by the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: What is your name, please?
The Witness: John Garrett.

Direct examination.

By Mr. Greer:

Q. Where are you from, Mr. Garrett?
A. From Boise, Idaho.
Q. What is your occupation there?
A. Salesmanager for D. N. Nordling Parts Company.
Q. How long have you been with that company?
A. 20 years in July.
Q. Would you tell the court something of the scope of the company's activity? What kind of business is it in?
A. We deal in replacement auto parts, accessories, etc., on a wholesale basis to service stations, garages, commercial fleets and accounts of that type.
Q. What is your geographical scope? How many states [fol. 2423] do you cover?
A. We cover all of Southwestern Idaho and Malheur County of Oregon with six stores.

Mr. Paradise: I did not hear your last statement.
The Witness: Malheur County in Oregon.
Mr. Paradise: Did you say "six" something or other?
The Witness: With six stores. We have six stores.
The Court: Malheur is spelled like in French Malheur, M-a-l-h-e-u-r.

By Mr. Greer:

Q. Do you sell in any other states besides Idaho and Oregon?
A. No, sir.

Q. Tell the court some of the products that you handle, Mr. Garrett?

A. By brand names do you mean or——

Q. Yes. For example, do you handle Fram filters?

A. Yes, sir, we handle Fram filters.

Q. Where do they come from?

A. We have ordered them from Providence, Rhode Island for many years. However, at present they have a warehouse in Ogden, Utah.

Q. Is that the home factory of the Fram Company, Providence?

A. Providence, Rhode Island.

Q. What kind of fan belts do you sell?

[fol. 2424] A. At the present we sell Gates.

Q. What kind of batteries?

A. Willard.

Q. Where do those Gates fan belts come from?

A. Denver, Colorado.

Q. Where do the Willard batteries come from?

A. Portland, Oregon.

Q. What kind of car polish do you sell?

A. DuPont.

Q. Where does it come from?

A. San Francisco.

Q. Mr. Garrett, are there any Richfield Service Stations in the area that your company services?

A. Yes, sir.

Q. That is, are there any service stations dispensing that brand of gasoline?

A. Yes, sir.

Q. Are there any in Boise?

A. Yes, sir.

Q. Directing your attention to such a station operated by a Sam Stewart at 118 South Capitol Boulevard in Boise,——

Mr. Paradise: May I ask if that was Sam Stewart you referred to?

Mr. Greer: Yes. Are you ready, counsel?

Mr. Paradise: Yes, we are ready.

[fol. 2425] Q. Do you recall calling on that service station in the year 1948?

Mr. Paradise: May it be stipulated, counsel, that the Stewart station is a Richfield L-O station?

Mr. Greer: It may be so stipulated.

A. Yes, sir.

Q. Do you recall attempting with the salesman under your supervision to sell your merchandise to that operator?

A. Yes, sir.

Q. Was that attempt successful?

A. Partly, yes.

Q. Would you tell the court what your experience was there?

A. We sold Mr. Stewart that day an order of spark plugs and attempted to sell him fan belts.

Q. Did he make a statement to you about the fan belts?

A. Yes. He said that the fan belts they handled were Goodyear and he had to stay with Goodyear fan belts.

Q. Did he say why he had to stay with Goodyear fan belts?

A. The company required it.

Q. By the company did he mean Richfield?

A. The Richfield Oil Company.

Q. Directing your attention to a service station operated [fol. 2426] by Harry E. Patton at 10th and State Streets in Boise, have you ever called on that station?

A. Yes, sir.

Q. When?

A. During 1948 and possibly early 1949.

Q. Would you tell the court what your experience was there?

Mr. Paradise: May it be stipulated, first, that this station is a Richfield L-O station?

Mr. Greer: So stipulated.

Mr. Paradise: And leased to Mr. Patton, and was at the time of the conversation?

Mr. Greer: Yes, sir.

Mr. Paradise: Thank you.

By Mr. Greer:

Q. What experience did you have at Mr. Patton's station?

A. The particular call that I remember that I was not

too pleased with, my salesman, Mr. Hanson, sold him a couple of filter cartridges and asked him to increase it to six cartridges on which he would receive a quantity discount or a quantity price, he having stocked No. C-4 Fram filters, which is a very popular number, and carried two or three in stock. We asked him to increase it to six filters. He said he could send them up. "If they catch me, I will have to send them back."

[fol. 2427] Q. How much did you sell Mr. Patton on an average during the period of his activity?

A. It would range from $50 to $60 a month up to possibly as high as $250-$300.

Q. Was he doing quite a bit of business in Boise?

A. He was one of our best accounts in the service stations.

Q. Was he subsequently terminated? All I will ask you is, did he subsequently leave that station?

A. Yes, sir.

Q. Do you recall when?

A. Yes, sir.

Q. Did you have any conversation with him at that time?

A. Yes, sir.

Q. What was the substance of that conversation?

A. He came into our store one morning and told me that he was leaving the station. Naturally, I was very much concerned as he was a very good account, and I asked him why. I couldn't understand. He says, "I am selling too much for Nordling Parts Company and not enough for Richfield."

Mr. Greer: The witness is with you.

Cross-examination.

By Mr. Paradise:

[fol. 2428] Q. How many accounts does the Nordling Auto Parts Company sell to, Mr. Garrett?

A. With all six stores?

Q. Yes.

A. We have approximately 1,000.

Q. Now, those accounts you mentioned, I believe, were service station accounts, garages and motor truck fleets?

A. That is right.

Q. Where are these six stores?

A. Starting at Burley, Idaho, Twin Falls, Idaho, Gooding, Idaho, Boise, Idaho, Nampa, Idaho, and Ontario, Oregon.

Q. Are those retail stores?

A. No, sir.

Q. How are those stores operated?

A. They are operated on a whole sale basis. However, if someone comes in and desires to buy a product, nationally advertised line of ours retail, we do sell them. However, less than 3 per cent is retail business.

Q. Do salesmen go out of those stores and solicit business in the area of the store?

A. Yes, sir.

Q. What is the relationship of the salesmen to the Nordling Company? Does Nordling Company employ them on a salary?

A. Employs them on a strictly commission basis.

[fol. 2429] Q. On a commission?

A. Yes, sir.

Q. Those are stores owned by the Nordling Supply Co.?

A. Owned by N. D. Nordling himself, personally.

Q. And leased by the company, I assume?

A. No.

Mr. Dixon: If the court please, I think this type of questioning is irrelevant and immaterial.

The Court: All right, go ahead.

A. Mr. Nordling owns the stores himself and operates them.

By Mr. Paradise:

Q. In those stores, as I understand, you carry Fram filters?

A. Yes, sir.

Q. And Gates fans and Willard batteries, by way of illustration?

A. Gates fan belts.

Q. Gates fan belts, yes.

A. And Willard batteries, yes, sir.

Q. Do you carry any other fan belts besides Gates?

A. No, sir.

Q. Do you carry any other filters besides Fram filters?

A. We carry a small selection of Purolator filters. However, we don't handle the line any longer. It is merely [fol. 2430] a close-out from several years back.

Q. Do you carry any other batteries besides Willard batteries?

A. No, sir.

Q. Do you permit your salesmen operating out of those stores on their own account and for their own benefit to sell Goodyear batteries?

Mr. Dixon: If the court please, I certainly object to that question. I think this type of cross examination has gone far enough and is immaterial.

The Court: I will sustain the objection.

By Mr. Paradise:

Q. Have the number of Nordlings accounts increased or decreased over the past five-year period?

A. They have decreased.

Q. Decreased. Would you state in what respect?

A. In volume of business.

Q. In number of accounts?

A. No, sir.

Q. Not in number of accounts?

A. Not in number.

Q. But in volume, yes.

A. In volume, yes.

Mr. Paradise: No further questions.

The Court: All right, step down.

[fol. 2431] Mr. Greer: Stand aside.

The Court: Call your next witness.

Mr. Greer: Mr. Christie.

Glenn Christie, called as a witness by the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: Glenn Christie.

Direct examination.

By Mr. Greer:

Q. Where do you live, Mr. Christie?
A. Boise, Idaho.
Q. Boise, Idaho?
A. Yes, sir.
Q. I believe that you are a salesman for the same company as the witness who just testified?
A. I am.
Q. How long have you been with that company, Mr. Christie?
A. Approximately nine years. Approximately nine years.
Q. Directing your attention, Mr. Christie, to a service station operated by a William L. O'Malley on Highway No. 30 at Nampa, Idaho, are you familiar with that station?
A. Yes, sir.
[fol. 2432] Q. What kind of gasoline does it sell?
A. Richfield.
Q. Have you ever called on that station in an attempt to sell products sold by your company?
A. Yes, sir.

Mr. Paradise: May it be stipulated, counsel, that this O'Malley station is an L-O operated Richfield oil station?
Mr. Greer: It is so stipulated.

Q. You have called on that station?
A. Yes, sir.
Q. Will you indicate to the court your experience there?
A. Well, I walked into his station there one morning when he was short on spark plugs and I noticed there was another man there but paid no attention to him at the time. I asked him for an order on spark plugs. He told me I should know better than to ask him for that order when there was a Richfield representative there. So I asked the Richfield representative if he expected the man to be without merchandise until such time as he could get it in there.
Q. Did you sell him spark plugs that morning?
A. No, sir.

The Court: You cut him off on a statement.

Mr. Greer: I beg your pardon, your Honor.

[fol. 2433] The Court: You did not tell us what he said to you.

A. He said, "No," he guessed he couldn't ask the man to do that, to wait until he could get plugs in.

The Court: All right.

By Mr. Greer:

Q. Did you sell him the spark plugs?

A. No, I did not.

Q. Directing your attention to a station operated by Oliver Lyle at 724—12th Avenue Road, Nampa, Idaho, are you familiar with that station?

A. Yes, sir.

Q. Did it dispense Richfield gasoline?

A. Yes, sir.

Q. Did you ever call in an attempt to sell your merchandise there?

A. Yes, sir.

Q. What was your experience at that station?

Mr. Paradise: May it be established the kind of station that these stations are, that they be identified as to their nature prior to the time the question is asked?

Mr. Greer: That also is a L-O station.

Mr. Paradise: And was at the time of the visit.

The Court: Yes, I want that myself. You noticed that I asked that question of the first witness. All right, go ahead.

[fol. 2434] By Mr. Greer:

Q. Did you call on that station?

A. Yes, sir.

Q. What was your experience there?

A. Well, I attempted to sell him Willard batteries.

Q. What was the reaction?

A. And we discussed the batteries and he made the statement that he did like the batteries but he couldn't sell them.

Q. Did he say why he couldn't sell them?

A. I asked him why and he said, "I can't display them here in the station." "However," he said, "I do have some

Willard batteries in my basement at the house I sell my customers when they ask."

Q. Did he say why he could not handle Willard batteries?

A. The company did not like for him to display them there.

Q. Did you sell him any?

A. No, I didn't.

Mr. Greer: That is all.

Mr. Paradise: No questions.

The Court: All right, step down.

Mr. Greer: Stand aside, sir.

The Court: Call your next.

[fol. 2435] Cecil H. Baker, called as a witness by the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: Cecil H. Baker.

Direct examination.

By Mr. Hall:

Q. Where do you reside, Mr. Baker?

A. Spokane, Washington.

Q. And what is your business?

A. I am a salesman for the Bearing and Rim Supply Co.

Q. Is the Bearing and Rim Supply Company located in Spokane?

A. 1204 West Second.

Q. How long have you been employed in that capacity?

A. Salesman for the past five years and I have been with the company 23 years in all.

Q. What is the territory covered by the Bearing and Rim Supply Company?

A. Our territory comes west as far as Wenatchee, south to Walla Walla and Lewiston, Idaho, and as far east as Billings, Montana, and north to the Canadian border.

Q. What are some of the principal products by brand names that you handle?

[fol. 2436] A. We have the complete A-C line. That includes fuel pumps, oil filters, filter elements, speedometer cables, fuel lines, the Exide battery, the Dayton rubber line, which includes Dayton fan belts and Dayton hose, and DuPont No. 7 products, and also the DuPont paint.

Q. What are the DuPont No. 7 products?

A. That is the chemical division of the DuPont Company, polishes and waxes and things like that.

[fol. 2437] Q. Now, in attempting to make sales of these products have you called upon stations that sell Richfield gasoline?

A. I have, sir.

Q. Can you name some of these stations?

Mr. Hall: And may it be stated, your Honor, that all of these stations are L-O stations, with which I am familiar?

The Court: All right.

The Witness: You mean the operators now, or the previous operators?

By Mr. Hall:

Q. The ones you have called on.

A. I have called on Don's Richfield service station, which is located in the 2000 block on East Sprague, Red's service station, which is on the corner of Sprague and Knapp, or Sprague and Thor, Cunningham's Richfield service at Division and Gordon, and Baker's Richfield service on West Broadway.

Q. Have you ever called on Mr. Lou Rhodes?

A. Yes, I have. He bought out Don McComb after he sold out.

Q. Now, relative to Red's Richfield service, will you state when you made your calls there?

A. Oh, I called when he first started in there, I called maybe twice a month, and we did a little business with him, and then the Richfield Corporation, so he tells me, was tightening down on him, and our business just gradually [fol. 2438] slacked off, and now I approximately call on him once a month.

Q. Did he make any other statements to you as to what Richfield's policy was with respect to tires, batteries and accessories?

A. Yes. He said he would like to buy our products, but Richfield would not O. K. them, and if he carried them he would have to hide them from the representatives.

Q. Relative to Cunningham's station on Division and Gordon, when did you call upon them?

A. You mean the last call, sir?

Q. Well, any calls on which they made any statements to you.

A. I called on them regularly about once a month, at that particular station.

Q. Were you able to sell them any products?

A. Yes. When Mr. Cunningham bought the station from Mr. Baker, or bought Baker's interest out, they were in there together in partnership first, and then Mr. Cunningham bought Mr. Barker's interest out, we sold them a lot of 48 oil filters at one time.

Q. A lot of what?

A. A quantity of 48 oil filters.

Q. What brand?

A. A-C.

[fol. 2439] Q. All right. Go ahead.

A. And when I called back on the next call, which was a month previous, or later, I should say, I noticed that the A-C oil filters were not being displayed any more, and I asked him what happened to them, and if he had sold them out. And he said, no, he had to take them off of display because they were not authorized by Richfield Corporation.

Q. Did you ever have any other experience at Mr. Cunningham's station with a Richfield representative?

A. Yes, I was calling on him not too long ago, I believe it was last fall some time, and I don't know the exact month, but it was, say, somewhere around September or October, and I propositioned him on his anti-freeze order for that particular fall. And while we was in there talking about it, why, a Richfield representative came in, whose name he told me was Mr. Neff after he had left. I didn't know the gentleman. I had seen him at other stations. He asked Mr. Cunningham if he didn't want to buy some oil, and he went ahead and made an inventory of the stock that Cunningham had on hand at that time, and he said he wanted him to buy 30 more cases of oil. Mr. Cunningham told him that he didn't believe he needed it right at that time. And the ques-

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tion came up jokingly of the requirements of having to buy this merchandise, and I spoke up and said, "Well, I would buy from whomever I pleased, and whatever merchandise [fol. 2440] my customers would want me to handle."

And this gentleman spoke up and said, "He can't do that."

And I asked him if he would put that in writing. So he immediately turned to Mr. Cunningham and asked him who I was.

Mr. Cunningham told him I might be a member of the Spokane police department, a sheriff, or a member of the F. B. I. And with that this gentleman walked out, and said he would see him later.

Q. Did he give you any statement in writing?

A. No, he did not, sir.

Q. Relative to Don's Richfield service on East Sprague?

A. Well, Don McComb was in that station during the war, and at that time he had purchased a very good stock of front wheel bearings for different cars, and during the war that merchandise was exceedingly hard to get. So this happened, I would say, in 1946 or early '47. He called me and asked me if I wouldn't come and make an inventory of this stock, there were some numbers that was low, and he wanted me to see if I couldn't take some of the numbers that was long, and take them back and exchange them for numbers that he was short.

So I was making this inventory, and a customer came in and asked Don if he wouldn't service his car for him, that he had to make a quick trip to Seattle, and he wanted the [fol. 2441] transmission changed and the differential, and the car completely greased, and the oil filter changed, and he said, "You can't handle the brand of oil I want, so I have purchased it and it is in the back seat of the car, and will you change that for me?"

Don said, "I'll be glad to." Don completed the work and let the car back down on the hoist, in preparation of putting the oil into the engine, and was taking it out of the car and placing it on the bench to put it in the car, when this Richfield representative walked in.

I didn't know at the time who the gentleman was, but I learned later it was Mr. Neff. And there was quite an argument come up about this particular oil, and Mr. Neff's part-

ing words to Mr. McComb was that if he ever caught any more Quaker State oil in that station, that he would cancel his lease immediately.

Q. Did you ever attempt to make any sales to Don's successor, Lou Rhodes?

A. Yes, I did, sir, but I didn't have very much success, because he said he was being held very strictly to Richfield products, and due to that, why, I didn't call on him any more.

Q. Will you tell us where the Bearing & Rim Supply Company gets its Exide batteries?

A. It comes from Ohio.

[fol. 2442] Q. And the A-C spark plugs? And filters?

A. Flint, Michigan.

Q. And the fan belts and hoses?

A. Dayton, Ohio.

Q. And where did your oil products come from?

A. San Francisco.

Mr. Hall: You may take the witness.

Cross-examination:

Mr. Paradise: It is stipulated that all of the stations that were referred to by Mr. Baker were L-O stations?

Mr. Hall: Yes.

Mr. Paradise: At the time of these discussions?

Mr. Hall: Yes.

By Mr. Paradise:

Q. Mr. Baker, at the time of this discussion at the McComb station were you a member of the F.B.I.?

A. No, sir, I am not.

Q. How long have you been a salesman of these products?

A. I have been in the territory selling them for about six years, sir.

Q. You were familiar with the fact, were you, Mr. Baker, that various oil companies own service stations in the territory in which you operate?

A. Yes, sir.

[fol. 2443] Q. And also that various companies lease service stations in the territory in which you operate?

A. Yes, sir.

Q. Are you also familiar with the fact that Richfield Oil Corporation does that?

A. Yes, sir.

Q. And that some of the stations displaying the Richfield brands are owned in fee or leased by Richfield?

A. That's correct.

Q. You are also aware of the fact, are you not, that the operators of those stations have subleased them from Richfield?

A. Yes.

Q. When you approach a service station bearing Richfield colors, do you inquire of the operator at the time you solicit his business whether Richfield owns that station?

A. No, I do not, sir.

Q. You make no inquiry of that sort?

A. No, sir.

Q. Do you inquire whether Richfield has a lease on the station?

A. No, sir, I do not.

Q. Do you inquire whether the operator of that station has leased it from Richfield for a particular purpose?

A. No, sir.

[fol. 2444] Mr. Paradise: That is all.

Redirect examination.

By Mr. Hall:

Q. Just one question. You didn't tell this Richfield representative you were an F.B.I. agent, did you?

A. No, sir, I did not.

Mr. Hall: That is all.

The Court: Step down.

(Witness excused.)

The Court: All right, gentlemen, before we continue we will have a short recess.

However, gentlemen, I want to make a brief announcement. We are going to go on until 12:30, and then I will take an adjournment until 2:30, because I desire to attend the funeral of a very distinguished member of the bar, Mr. Hubert T. Morrow, who died just the other day. Mr. Mor-

row, as you know, was very prominent in the activities of the Los Angeles Bar Association. He was a former president, and he was very active in the Association while he was president, and was the originator of what is known now as the Junior Group of the Bar, the junior barristers. He had a very distinguished career here, and his death is a real loss to the Bar, because he represented a very high type of lawyer, of which this Bar has many. So we will make that [fol. 2445] arrangement so that there will be no loss of time by my attendance at the services to pay my respects to a friend.

(A short recess was taken.)

The Court: Call your next witness.

Mr. Hall: Mr. Burris.

Loren J. Burris, called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination:

The Clerk: What is your name, please?

The Witness: Loren J. Burris.

The Clerk: The spelling of your first name, please?

The Witness: L-o-r-e-n.

The Clerk: And the spelling of the last name?

The Witness: B-u-r-r-i-s.

By Mr. Hall:

Q. Your residence, Mr. Burris?

A. Spokane, Washington.

Q. And your occupation?

A. I am a part owner and the outside salesman for G & M Auto Supply.

Mr. Paradise: What was the name of the company?

The Witness: G & M Auto Supply.

[fol. 2446] By Mr. Hall:

Q. Where are they located?

A. At 2nd and Washington in Spokane.

Q. Will you name some of the principal brand names of the automotive accessories which your firm handles?

A. We carry the Toledo Motor Parts line, A-C filters, Purolator filters, Sale power rings.

Q. And what batteries?

A. Willard batteries.

Q. Spark plugs?

A. Champion spark plugs.

Q. Light bulbs?

A. G. E. and Westinghouse.

Q. Fuel pumps?

A. Airtex.

Q. In your attempts to make sales of these products your company handles, have you called upon stations which sell Richfield gasoline?

A. Yes, I do.

Q. Calling your attention to a station operated by Walter Connor at 3427 Northwest Boulevard, I will ask you if you ever called on Mr. Connor?

A. I called on Mr. Connor——

Mr. Paradise: Just a moment, please. Is this an L-O station?

Mr. Hall: I will state, your Honor, all of these stations [fol. 2447] are L-O stations.

The Witness: I called on Mr. Connor several times. Mr. Connor wasn't there very long, and I now do call upon his successor. It is Jim's Richfield station now. I forget the owner's last name.

By Mr. Hall:

Q. Now, while we are on Mr. Connor, do you remember when it was he was in the station?

A. No, I don't. It is approximately a year ago or a year and a half ago.

Q. Did you make any attempts to sell him any of your products?

A. Yes, I did. However, with Mr. Connor, the station was quite run down, and it didn't look—I mean he just wasn't buying very much from anyone.

Q. Did he give you any reason why he didn't purchase any particular articles from you?

A. Mr. Connor didn't, no.

Q. Now, what about his successor, this Jim's Richfield service?

A. Jim and his wife, yes. I knew them prior to their going into the station, and I called on them when they first started, and they said that they liked G & M Auto Supply, and they would be glad to give me some business, but, however, it would take them until they built up their accessory business, as they had to buy all their standard mer-
[fol. 2448] chandise from Richfield, their Purolators, and spark plugs, and that merchandise, and I couldn't expect any of that.

Q. Calling your attention to McKinney's Richfield service station on South Grand in Spokane.

A. I called on Mr. McKinney—he is fairly close to us—maybe once a month. Mr. McKinney—at one time I suggested to Mr. McKinney that I call on him every week when I was up there, that maybe I would get more of his business. We had quite a pick-up business on him at the store. He would pick up a Gates fan belt, or something that he was out of. And he said there really wasn't much use in calling any oftener because he had to buy most of his stuff from Hobson, who was the Richfield dealer up there, and that he would still continue to pick up his shorts from us, stuff that he needed within the next hour or half hour, but there was no use in calling more than once a month.

Q. Will you explain the term "shorts"? Is it things that he needs immediately?

A. That is right.

Q. Calling your attention to John Farnsworth, on West 303—or on West 30 3rd Avenue in Spokane, have you made attempts to sell him?

A. I have sold Mr. Farnsworth for the past five years. Prior to taking over the station he was in a garage in the same neighborhood, and that is within two blocks of my store.

[fol. 2449] Q. Give us your experience with Mr. Farnsworth since he leased this station from Richfield?

A. Mr. Farnsworth will not give us any of his stock orders, filters, or merchandise like that. However, he does—he is at the store ten times a day picking up merchandise and motor parts.

Q. Has he ever made any statements to you as to why he will not carry your line of products?

A. I can't remember offhand him making a statement. It was more or less an understanding between us that I won't bother him for the stuff that he is supposed to buy from Richfield.

[fol. 2450] Q. Calling your attention to the Robert Stone station at Main and Division Streets in Spokane, Washington, will you tell us what experience you had with Mr. Stone?

A. Yes. I met Mr. Stone. He was working for the Shell Company in a Shell operated station as an employee of the Shell Company, and he was taking over a new Richfield station. I believe this was in the fall of '48. And he came in the store. I had never met the fellow before. And said he understood that we had some permanent anti-freeze and that he was going into a new station and he would certainly appreciate any that we could give him. And we did have a carload of anti-freeze that we had just received.

Q. Did he make any statements at that time about his purchasing that anti-freeze from Richfield Oil Corporation?

A. He said that he was opening a new station and that Richfield had no anti-freeze for him, and at that time of year in Spokane, I mean, it was quite a disadvantage for a new station not to have even a case of anti-freeze.

Q. In connection with this anti-freeze deal did you at the same time or around the same time talk with Al Cloninger?

A. Yes. He brought Mr. Cloninger in the second day. I didn't give——

Q. Who was Mr. Cloninger?

[fol. 2451] A. Mr. Cloninger was the retail representative for Richfield at the time.

Mr. Paradise: We will stipulate Mr. Cloninger was a merchandiser.

Mr. Hall: Was a merchandiser.

A. A merchandise man. I didn't give him a definite answer. I told him I would have to talk it over with my partner. We were interested in other business besides anti-freeze business, because we could have given that to anybody.

Q. Tell what your conversation with Mr. Cloninger was.

A. Mr. Cloninger—Mr. Stone brought Mr. Cloninger in and introduced him to me and we discussed giving Mr. Stone a hundred gallons of anti-freeze to kind of open this big station with a splash and help him out. But the thing—I said I just didn't like to do it because there was no possibility of getting any new business. This was to Mr. Cloninger. And he said, "Well, you sell a lot of merchandise that Lee Hobson doesn't sell. Bob can buy some of that from you."

Q. What were some of those items mentioned?

A. He mentioned specifically, he said, "Bob, you are going to need front wheel bearings. Why can't you buy some of those from Larry?" That was the gist of the conversa-[fol. 2452] tion. In other words, it was an agreement that——

Mr. Paradise: We are not concerned with that.

The Court: Just repeat the conversation, not the agreement.

Mr. Hall: Just the conversation.

Q. Did you ever have any experience with Don McCombs, Don's Richfield Service on East Sprague?

A. Yes, I did. I called on Don for—oh, I would say over a year prior to the time he sold out. I sold him—oh, from $25 to $50 worth of merchandise a month.

Q. Was it merchandise that was competitive to Richfield's approved merchandise?

A. At first I did succeed in selling him some battery cables, but after he bought the original order of battery cables he told he would have to cut it out.

Q. Did he explain why he would have to cut it out?

A. Yes. He said that Hobson and Neff had raised so much trouble for him that he would have to quit, discontinue buying them from me.

Q. Did you have any experience with attempting to sell any products, or any other business experience with Lou Rhodes and his successor at that same station?

A. Yes, I did. When I was calling on McCombs every week prior to the time he sold out, and when Rhodes came in I called on him, and he told me that he had gone in

[fol. 2453] there—Don had gotten into so much trouble on account of buying so much stuff outside of the Richfield TBA, that he was going to stick pretty close to Richfield, in fact he had to. So I didn't do very much business with Rhodes for, oh, a year. I quit calling on him regularly, but I would stop in once a month or so. After he was there a year or so I did a little better. However, I didn't sell any merchandise that Richfield had. I sold him other accessories.

Q. Do you recall the incident of the Lincoln batteries which Don had in his station when he turned the station over to Mr. Rhodes?

A. Yes. Don had—in fact, that was one of the things that caused him so much trouble with Richfield. He insisted on selling these Lincoln batteries because he bought them better and there was a better guarantee on them than the Goodyear. And when he decided to sell out and get out of the business——

Mr. Paradise: May I object. The question calls for testimony concerning conversation.

The Court: He is relating conversation. Aren't you telling us what he told you?

The Witness: I am telling you what he told me, yes.

The Court: All right.

A. He told me that he was not going to be able to sell the batteries to Lou Rhodes and asked me if I would try to sell [fol. 2454] them to some other service station operator for him, see if I could dump the whole thing. He had 15 or 18 batteries and he wanted someone to just take the whole thing at less than it would cost to buy them from the supplier or jobber. I was not successful in moving them. I did have a couple of operators call him, but their idea of a close-out price and his were not the same. So, as a result, they were not sold.

By Mr. Hall:

Q. Will you state what the general policy is with relation to the continuance of the guarantee on batteries from the sale of one retailer to another retailer?

Mr. Paradise: Objected to as immaterial.

The Court: Overruled.

Mr. Hall: It is to show the difficulty of disposing of these, your Honor.

The Court: Yes. All right, go ahead.

A. Well, that voids the warranty. In other words, the original jobber is no longer required to replace defective batteries. The warranty on the battery is to the original dealer.

By Mr. Hall:

Q. And will you state whether or not that was a significant matter in your attempt to dispose of these batteries for Mr. Lou Rhodes?

A. That is right. That is right. In other words, the fellows that I asked to buy the batteries figured that they [fol. 2455] should buy them at a considerably reduced price because they would have to stand their own guarantee on them.

Q. How long have you been in this business, Mr. Burris?

A. I have been with G & M Oil people for four years.

Q. When you first came with G & M how often did you attempt to contact Richfield service station operators?

A. Oh, whenever I came to them. In other words, prior to my coming into G & M Oil Supply it was a new firm, had been established a year prior to that. They had no outside salesmen and there was no regular route of call or regular established outside business, and as a result, I just went around calling on anyone that looked like they were selling merchandise, moving merchandise, trying to build a business.

Q. Did you find that your sales attempts with the Richfield operators were successful?

A. No, I didn't. I found that with myself trying to cover the entire City of Spokane, that I had better—my time was better spent some place else.

Q. Presently in your sales operations do you make the same number of calls on Richfield stations that you did when you first went into the business?

A. No. No, I don't.

Mr. Hall: You may have the witness.

Mr. Paradise: Your statement, as I understood, at the beginning was that it was stipulated that all the persons [fol. 2456] and sales concerning which Mr. Burris testified are L-O operators and L-O stations?

Mr. Hall: Yes.

Mr. Paradise: So stipulated. No questions.

Mr. Hall: All right, Mr. Burris.

The Court: Step down. Call your next witness.

Mr. Hall: Just one thing, Mr. Paradise, please. The stipulation I made, of course, does not apply to that last statement.

Mr. Paradise: Which one?

Mr. Hall: It was a general statement, his calls on Richfield stations.

Mr. Paradise: If that be true, if the court please, I move that the answer be stricken because I understood Mr. Hall's statement at the beginning to be that he was only going to direct it to L-O stations.

Mr. Hall: Specific statements. I did not realize at the time that Mr. Paradise asked for that stipulation.

Mr. Paradise: Now, that is a critical matter, if your Honor please, as counsel knows, and I am relying upon Mr. Hall's statements that these were all L-O operators.

Mr. Hall: The specific ones mentioned were all L-O's. I do not know what ones he has called on.

The Court: The specific ones mentioned, but there is no evidence that he called on any others so far unless you point [fol. 2457] to some station that was out of the category. There is no evidence.

Mr. Hall: There was just the general statement that he called on Richfield stations. That was all, your Honor.

The Court: The evidence before the court as far as this witness is concerned is that the only stations he called on were L-O stations. There was no evidence they were of a different type. If you want to show they were of a different type than that, put someone else on for that. I don't think he knows.

Mr. Hall: I doubt it.

The Court: All right. So we stand where we were before.

JAMES T. SMITH, called as a witness by the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: What is your name, please?
The Witness: James T. Smith.

Direct examination.

By Mr. Alexander:

Q. Where do you live, Mr. Smith?
A. Los Angeles.
Q. Have you ever been the lessee of a service station for the Richfield Oil Corporation?
A. I have.
Q. Will you state the location of that station and when? [fol. 2458] A. 11401 South Figueroa Street, at the southwest corner of Figueroa and Imperial Highway, Los Angeles.
Q. When did you enter into negotiations for the occupancy of this station?
A. I entered into negotiations in December 1941. My lease was signed January 1942.
Q. Did you have conversations with Richfield representatives in connection with the negotiation for this lease?
A. I did, numerous times.
Q. Who were the Richfield representatives present at the time, December '41, when negotiations were conducted?
A. Mr. Kenny White, and I am very sorry I can't recall the other person's name.
Q. Mr. Kenny White and another?
A. Mr. White and another representative of Richfield. I can describe him. Maybe someone else will know his name.
Q. Can you relate to the court in substance what the nature of this conversation was in connection with negotiations for this lease?
A. Well, I was operating across the street from them and the owner of the property that the Richfield lease was on was a very good friend of mine and he, through his connections with Richfield——

Mr. DeMartini: I will object to this line of testimony, [fol. 2459] your Honor. Limit it to conversations.

The Court: Let us get down to the approach, not the manner of approach.

A. I met in my home with Mr. White and the other Richfield man before, or, that is, during the time we were attempting to draw up a lease for this station, and the discussion was handling Richfield gasoline and oil.

Mr. Alexander: Is it stipulated that the Form 542, print date 9-41, executed January 9, 1942, effective January 12, 1942 was entered into between the Richfield Oil Corporation and James T. Smith?

Mr. DeMartini: So stipulated.

By Mr. Alexander:

Q. Mr. Smith, I show you this Form 542. Is this your signature here?

A. It is.

Q. Calling your attention to the paragraph entitled "term", will you read that, please?

A. "To have and to hold unto"——

Q. No. Excuse me. Read it to yourself.

The Court: Read it to yourself.

The Witness: Oh, I am sorry.

By Mr. Alexander:

Q. Did you have any conversation with Richfield representatives in connection with that paragraph you have just read?

A. Yes. I discussed that with Mr. White and he said [fol. 2460] it was a thing that I didn't especially need to worry about. He said that they didn't often write an operator out.

Q. Did you subsequently have a discussion with Mr. Phelps concerning that same provision?

A. Yes, I had quite a discussion with Mr. Phelps, and Mr. Phelps informed me that—Phelps was a fellow that used an expression "play ball." That was one of his pet expressions. He said as long as I played ball with Richfield that I would be all right. He also informed me during this discussion that they had a ground lease for 10

years with a five-year option and that in his opinion I would be in there for 15 years.

Q. Mr. Smith, at the time you took occupancy of this station did you make an investment?

A. I did. My investment for equipment and stock was—oh, approximately $1,500, possibly $1,600.

Q. Was this a new station that you took occupancy of, Mr. Smith?

A. It was a new station.

Q. After you had been there approximately 90 days what was the gallonage as you recall?

A. The first 90 days, as I remember, it was about, for the first 90 days totaled between 50-54,000. My opening month was approximately 18,000 gallons, and it held that way and a little better from then on.

Q. Calling your attention to April of 1942 do you recall [fol. 2461] having attended a meeting in Masonic Temple in Long Beach at which Richfield representatives were present?

A. I did. The——

Q. Excuse me.

A. Yes, I attended the meeting.

Q. Do you recall any discussions that were held there at that time?

A. The instructions were at this meeting—it was a regular sales meeting, which is common in the gasoline business, and we were informed by the speaker that things would probably get a little rough during war, that we could expect gas rationing and that we would probably lose part or possibly all of our help, and it was their idea that we should do anything possible to keep the Richfield gas stations open. The speaker said to sell real estate, sell automobiles, take in laundry if you feel like it, but do anything to keep the stations operating.

Q. Mr. Smith, did you have any discussions with any Richfield representatives in connection with the handling of Richfield oil?

A. Yes.

Q. Can you recall——

A. We agreed to that orally when I went in the station.

Q. Did you subsequently have any occasion arise where you had discussion concerning that original arrangement?

[fol. 2462] A. Well, I had an occasion where I had been told to keep the station open if possible. I had the opportunity to contact two or three outfits to do their service work, but in this service work I had to furnish them a certain kind of oil in order to sell them gasoline. And I took that up with the merchandise man and he said it was not good, but if I did do it and he did not see it, nobody would know it but he and I.

Q. Did you take the account on?

A. I did.

Q. What was the type of oil that you handled in this connection?

A. Pennzoil.

Q. Calling your attention to the spring of 1943, do you recall the purchase of some Richfield lubricating oil?

A. Yes, sir. There was a fellow by the name of Mr. Bingham that had been in the trucking business. He lived a long block from my station and he had 22 barrels of Richfield oil, Rich Lube and Pennsylvania, mostly Rich Lube, and he had lost most of his help through the armed forces and had had a wreck, and he got mad and decided to go out of business. He came into my place and wanted me to buy his oil at a reasonable price, and I did.

Q. Did you subsequently have discussion with Richfield representatives in connection with this purchase?

A. Not at that time. In fact it was more than a year [fol. 2463] before they found out where it came from.

Q. Well, I mean did you have discussions with Richfield representatives?

A. Before I bought the oil?

Q. No, subsequent.

A. No. I don't quite understand the question.

Q. You stated, Mr. Smith, that you did purchase the oil from Mr. Bingham.

A. Yes.

Q. Did you subequently have discussions with Richfield representatives in connection with the oil that you had purchased?

A. At that time, no. I did later.

Q. Oh, I see. That is clear. Will you relate those conversations that you had later?

A. Well, you see, this oil that I bought from Mr. Bingham, I brought it down through the alley, just rolled it in the barrels. We didn't truck it in or anything, and rolled it up onto a vacant lot back of my station. I turned the Richfield label towards the station where they could easily be seen, and the representative of Richfield didn't know where the oil came from as long as the "Richfield" showed on it. Nobody said nothing. But while I was working that, I was using this oil that I purchased from Mr. Bingham along with oil that I was buying from Richfield, and I was [fol. 2464] buying just enough to keep the wolf off my neck.

Q. Now, did you subsequently have discussions with Richfield representatives in connection with that purchase?

A. Yes.

Q. Will you relate it to the court?

A. Well, he told me that I was a bad boy, I shouldn't have got it.

Q. Who told you this, Mr. Smith?

A. The Richfield representative, the merchandise man.

Q. Mr. Smith, did you handle automotive accessories at your station?

A. I did.

Q. From whom did you purchase these automotive accessories?

A. Do you mean the names of the companies?

Q. Yes.

A. I bought from Jewel Auto Supply, Baird Auto Supply, and I bought some accessories from Mr. Doucette and Mr. Cheney.

Q. Are these latter two also TBA representatives of Richfield Oil Corporation?

A. They are.

[fol. 2465] Q. Will you relate the conversation you had in connection with the first time when Mr. Doucette was brought to your station?

A. The first time Mr. Cheney came into my station I had been told he was coming and I had, oh, I had numerous things in there that he didn't handle. I had Jewell batteries, and I had another battery made by Cesan, just a few, not many. You couldn't get too many. And, naturally, I wanted to do some business with Mr. Cheney because he had some

tires and that was the hedge then, everybody wanted tires. And I bought a little merchandise from Mr. Cheney. I took an order of batteries, and I bought some gas caps, gas caps, and radiator caps. And then at a later time I bought a little more stuff, and I was trying to buy enough merchandise so he would give me some tires. Well, I was never successful in getting any tires through him, so I quit buying from him.

Q. Did you have any discussion with any Richfield representatives in connection with the determination to quit buying from him?

A. Well, at the time I quit buying from him, the information was relayed down to the Watson office, and I was called on the phone, and asked why, and I explained why I quit buying from him, that the explanation was very simple, that I could buy a battery with the same guarantee——

Q. I asked you, Mr. Smith, to whom did you make this [fol. 2466] explanation?

A. Mr. Phelps.

Q. Who is Mr. Phelps?

A. The depot manager.

Q. A Richfield employee?

A. Yes, the Watson depot manager. And, anyway, I explained I could buy the batteries with the same guarantee, and get them local without any difficulty. In other words, the supplier I was getting them from was only two or three blocks from my place, and it was convenient for me to get this other battery, I could buy it better, and in case of an adjustment I could get an adjustment quicker than I could at Richfield.

Q. When you say "buy it better," you mean at a more favorable price, with a larger margin?

A. I could get the same battery with the same guarantee at $2.30 to $2.70 less than the Goodyear, sir.

Q. Did you buy the Goodyear?

A. I could buy the Jewell battery less than the Goodyear battery. That was the reason for handling the Jewell battery.

Q. Did you have any discussions with Mr. Doucette in connection with the handling of the approved merchandise of Richfield?

A. Mr. Doucette came into my place, and I was told he

[fol. 2467] was coming, and he came in, and I had a very good line of merchandise. I mean I had a long line. I had quite a few things that he did not have, and I had some things that he did have. I was handling the Gates fan belt, and he wanted me to shift to his fan belt. In fact, I did buy some fan belts from him, and I bought some of his radiator hose, because I was still trying to buy enough merchandise from him so I could get some tires. And then I had, oh, different things, a few things that he didn't have. Some of the stuff he wanted me to buy I didn't buy, and some of his merchandise I did buy. And the dispute I had with Mr. Doucette was, I was buying Puralator elements at about five to eight per cent less than I could buy the same merchandise off of him, and I had the same condition in the Champion spark plugs. I was buying Champion spark plugs from another supplier in any lot I wanted it, I mean one or a dozen.

Q. Excuse me. Are the Champion and the Puralator the approved merchandise?

A. They are the approved merchandise of Richfield, and I could buy the Champion spark plugs about four cents cheaper from one source than I could from Mr. Doucette, the same plug, same number.

Q. Mr. Smith, you referred to a conversation you had with Mr. Phelps. Will you relate what was the nature of that conversation you had in connection with your TBA [fol. 2468] purchases you have just related?

A. Mr. Phelps informed me I was to buy this, which I didn't dispute, and I told him I would, because he was a big boy. And I did buy a considerable amount through Mr. Doucette, but I didn't buy as much as they expected me to. Consequently, I was told that I wasn't playing ball with them, and I wasn't co-operating with their sales staff. I explained to him that I could buy the plugs from another source, and he immediately wanted to know what the other source was. And I didn't tell him at first, but he found out, and the person I was buying the plugs from at this 37 cents came to see me about it, and asked me why I told him.

I told him, "I was in a crack, and what could I do?"

He said, "Do you know I was likely to lose my franchise over it?"

And I said, "I am very sorry, or I wouldn't have said anything."

Q. When did you leave the station you leased from Richfield?

A. When did I close out?

Q. When did you leave?

A. January, 1946.

Q. Did you have a conversation with Richfield representatives prior to your leaving that ser ice station?

A. From six to eight hours a day, when I could get to [fol. 2469] them, for the last two or three days.

Q. Now, calling your attention—did you state when you left the station?

A. The date?

Q. The approximate date.

A. January,—well, I will tell you exactly.

Q. January,——

A. January the 9th, 1946.

Q. Did you have a conversation with Richfield representatives in December of 1945?

A. In December of '45 they had a new—brought in a new merchandise man, a little fellow, a nice little fellow he was, and he told me that I had been warned numerous times about having Pennzoil in my place.

I said, "Now, look. I haven't got Pennzoil in here." I said, "It's around in the garage. I had to put it in the garage, I had to get it out of sight, because they were closing the gate on me and had me trapped off base, and I knew it, so I put my Pennzoil in the garage."

And he told me I just had to get it out of there. He said, "The pressure is on, and you must do it."

Q. Did you have any conversation with Mr. Phelps at this time?

A. Mr. Phelps called me in his office on the day that I received the letter, January, the 9th, and at the time I went [fol. 2470] in the place, of course, I was—the letter was there, and that was it. And he told me I had been a bad boy, he read all the bad things off which I had done, which I didn't deny.

Q. What did he say, Mr. Smith?

A. Well, he said that I didn't co-operate with his TBA

men in buying their merchandise, and I explained to him that I was buying some. He said he knew I was buying some, but I wasn't buying all of it. He said I was just buying enough to keep some on the shelf, to keep the wolves off my neck.

So, anyway, Mr. Phelps also told me that he had been trying to get me to get the Pennzoil off the place for a long time, and I had consistently refused on it, and lied to him about it, which I didn't deny, that I had had it in the garage, still had it, but I wanted the business of these outfits that insisted on using Pennzoil, that I still was keeping the thing in mind of building good will for Richfield and I had a very good business, and I wanted to keep my business, and I was trying hard to keep it, although I knew I was trapped off base. And I explained to him the situation, and I said, "You know what I've done." And I said, "That's water under the river. How about giving me another chance at this?"

Well, he wouldn't do it. So I came back to the place, and called downtown and talked to Mr. Clune, and wanted to [fol. 2471] talk to Mr. Little, and they wouldn't let me, they said Little was out, which was all right.

Q. What was that?

A. I wanted to talk to Mr. Little.

Q. Who is Mr. Little?

A. He is the vice-president in charge of sales, I believe. Anyway, he was over Phelps, so I was trying to get around him to higher quarters to see if I could make a legitimate deal.

I asked Mr. Clune about letting me put up a bond that I would keep Pennzoil out of the place and to keep other unapproved merchandise out of the place. I offered to let them have a representative to come up and inventory the place, and offered to give them a cash bond guaranteeing I would keep it out. And Mr. Clune said he was sorry, it was out of his hands, and if Mr. Phelps saw fit to check me out, that was up to Mr. Phelps.

Q. I show you this letter, Mr. Smith, and ask you if that is the letter you testified you received.

A. That is it.

Mr. Alexander: The government asks that the service station lease, form 542, No. 9-41, be marked as Exhibit next in order.

The Court: All right.

The Clerk: Government's Exhibit 23, marked for identi-
[fol. 2472] fication and Government's Exhibit 23-A, marked for identification, being——

Mr. Alexander: Being the letter from the Richfield Oil Corporation, signed by H. W. Vossler, to Mr. James T. Smith, dated January 9, 1946.

(The documents referred to were marked Plaintiff's Exhibits 23 and 23-A, for identification.)

Mr. Alexander: The government offers these in evidence, your Honor.

The Court: They may be received.

The Clerk: 23 and 23-A in evidence.

(The documents, heretofore marked Plaintiff's Exhibits 23 and 23-A, for identification, were received in evidence.)

By Mr. Alexander:

Q. Mr. Smith, will you relate the circumstances under which Government's Exhibit 23-A was received by you? Briefly, if you will.

A. This was sent to me through mail, by registered mail, and it was received by one of the men in the station. I didn't receive it myself.

Q. Did you have any conversations in connection with the receipt of it, after you had received that letter, with Richfield representatives?

A. Yes, I had numerous. I say numerous, I talked to everybody I could get to, trying to get them to change their
[fol. 2473] mind. I was fighting for my neck. I was trapped off first base, way off.

Q. Now, Mr. Smith, calling your attention to the day prior to January 9, 1946, will you relate to the court the circumstances of the experiences that you had at your service station?

A. I don't quite understand what you mean. Is that the day I was checked out, or the day before I was checked out?

Q. The day you were checked out.

A. The day I was checked out?

Q. Yes.

A. The day I was checked out, they came up there. They were supposed to be there at 10:00 in the morning, and I was there with my bookkeeper.

Q. Who is "they"?

A. It was Richfield representatives, two representatives from Richfield, two men that were taking over the station, myself, and my bookkeeper, the six of us. Is that who you mean?

Q. Were you acquainted with the Richfield representatives by name?

A. One of them.

Q. What was his name? If you know; if not——

A. He was the new man, and he had only been there a [fol. 2474] couple of months. He was the little fellow.

Q. Will you continue on, Mr. Smith, with what took place?

A. They came up to check me out. They brought their forms, of course, like the usual procedure, and I had took practically all or as much of the merchandise out of my place as I could personally get out. So we took the inventory, and started on the right side of the building, and went in a circle.

My bookkeeper was writing down the inventory, and their man, the Richfield representative, was writing it down, on the instructions from the fellow that was taking the station, Mr. Skinner, and myself, and one other of the Richfield men. Richfield had two men. The two people each had two persons there, and we went right around the station, and all the merchandise that was what they called company-approved merchandise, they put it on the inventory. The other stuff, that wasn't put on the inventory. It was taken out of the place and loaded into a truck, and I returned most of it to the sources I bought it. Some stuff,—in fact, I still got some of it, such as used spark plugs.

Q. You said you made an inventory. Did you make an estimate of the value of the inventory put in the truck from the station?

A. The merchandise I took from the place, that my suc- [fol. 2475] cessor didn't accept, it was $422 worth of

merchandise. You wanted to know the value of it, was that it?

Q. Yes.

A. Yes, that was what it was. It was radiator hose, a few tires, and tubes, that wasn't approved, a very few batteries and fan belts.

The Court: All were unapproved items?

The Witness: Yes, all were unapproved items. I believe I had a little more than $100 worth of fan belts. That was the biggest single item, the Gates fan belts.

By Mr. Alexander:

Q. What did you do with these items?

A. Some I took back to the supplier, some I sold to other dealers, and some I still have, a very few.

The Court: Did you go into the same business for another concern?

The Witness: I did later, yes, and I have used some of the stuff there.

By Mr. Alexander:

Q. Mr. Smith, one further question: Did you execute any form of agreement with the Richfield Oil Corporation at the time of your termination, that notice and the termination was agreeable with you?

A. Now, that's a question that I am sure I can't truthfully answer. I probably—I say I did probably, did sign off on the thing. If I didn't, my bookkeeper did for me.

Q. You probably did what?

[fol. 2476] A. Sign the release. There was quite a few papers to be signed, like the transferring of the inventory, and whether I signed the release on the station I truthfully couldn't answer.

The Court: You were out, anyway?

The Witness: I was out, definitely; way out. I'm still out.

Mr. Alexander: No further questions, your Honor.

The Court: All right.

Cross-examination.

By Mr. DeMartini:

Q. I believe you testified, Mr. Smith, that Richfield objected to your buying Richfield lubricating oil from sources other than directly from the company; is that correct?

A. Yes, sir.

Q. On that sale Richfield would realize no profit; is that correct?

A. Right.

Q. I will show you an instrument, that is, a Form 542, dated January 9, 1942, and ask you to state what the rental under that lease was.

A. It was to be $70 a month minimum, with one cent a gallon for over 7,000 gallons.

Q. This lease does not so state, Mr. Smith. It states [fol. 2477] it is $70 flat.

A. That is the first lease?

Q. I believe so.

A. Well, the first three months I was in there Richfield gave me a break in this respect, that, as I remember now, I am not positive, but I don't think I paid any rent the first three months. Perhaps $1 a month, because they were having difficulty getting the place opened. That's the lease all right, but I think they attached a rider to that to waive that for three months.

Q. Now, I will show you a rider dated July 14, 1942, and ask you whether the rider under that lease is not $35 per month.

A. That is $35, yes. They reduced that before rationing came in.

Q. And then the next rental amendment was dated February 10, 1943, and the rent was reduced to $1 per month; is that correct?

A. $1 minimum. I believe if you will check Richfield's records that you will find that was also—I had that $1 minimum on there, but I think though that was when things were getting so tough, and they cut that way back.

Q. Then an instrument dated February 29, 1944, in which your rent was increased to $100 a month?

A. That was $100 a month, and I was to pay one cent a [fol. 2478] gallon for all over 10,000 gallons.

Q. That instrument doesn't so state, does it?

A. Well, I know it doesn't so state, but I paid it.

Q. Then I will show you this one, dated March 21, 1944, which was a month later, and that does call for $100 a month and one cent a gallon over 10,000?

A. That's the one. I, however, paid that. I never had any time in '44 or '45 that I did have a flat rent. That was one of my chief troubles. I was trying to get a ceiling on my rent.

Mr. DeMartini: That is all.

Redirect examination.

By Mr. Alexander:

Q. Just one question. To whom did you pay this rent?

A. I sent it down to the Richfield Refinery. I always sent it in my mail by check. You see, I would pay $100 the first of the month. They billed me for rent $100 the first of the month, and by the tenth of the month they would send me a bill for the rent that I owed over the 10,000 gallons. The last few months I was in Richfield, I was paying them just about $300 a month. I was pumping about 30,000. I think the last month I was there I pumped 31,200.

The Court: How long had you been at that station?

The Witness: I opened it new in '42, and I went out in '46.

[fol. 2479] The Court: What was the gallonage when you opened it?

The Witness: My opening gallonage was approximately 18,000 a month, just a little better than 50,000 for the first quarter, and my business continued to go up until we had rationing, and with rationing, when that came we were put on a percentage of our average sales, and my first quota, I believe they cut us 15 per cent, and my gallonage was cut to 20,000, just around 20,000.

The Court: Then when that was taken off in 1945, you built the business up again?

The Witness: When rationing went off in '45, by busi-

ness immediately went up. I was pumping the last few months about 30,000.

The Court: So you built up quite a patronage?

The Witness: I had a very good business, a good clean business.

The Court: All right. Step down.

(Witness excused.)

The Court: I think, gentlemen, this is a good time to stop, so we will take a recess until 2:30.

(Whereupon at 12:25 o'clock p. m. a recess was taken until 2:30 o' clock p. m. of the same day.)

[fol. 2480] Los Angeles, California, Tuesday, May 22, 1951.
2:30 P.M.

The Court: All right, gentlemen, let us go on.

Mr. Somerville: The Government calls Mr. Schumunk.

Richard Schumunk, called as a witness by the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: What is your name, please?

A. Richard Schumunk.

Direct examination.

By Mr. Somerville:

Q. Where do you reside, Mr. Schumunk?

The Witness: Pardon?

Q. Where do you live?

A. I live in Eugene, Oregon.

Q. And have you ever operated a service station under a lease from Richfield Oil Corporation?

A. Yes.

Q. And when did you first so operate a station?

A. Well, it was in Portland.

Mr. DeMartini: Will you speak louder Mr. Schumunk, please?

A. It was in Portland.

By Mr. Somerville:

Q. And what was the address, sir?
A. 12th and Sandy.
Q. At that time did you have a partner or did you have [fol. 2481] the lease in your own name?
A. I had a partner.

Mr. Somerville: May it be stipulated, counsel, that there is a 542 lease between Richfield and R. C. Schumunk and James R. Houle dated November 9, 1948?
Mr. DeMartini: On what?
Mr. Somerville: Covering the premises at 205 Northeast Sandy Boulevard in Portland.
Mr. DeMartini: Print date 1-47.
Mr. Somerville: Yes, sir.
Mr. DeMartini: On Form 542.
Mr. Somerville: May it be further stipulated, counsel, that the rental specified was $70. a month plus one cent over 7,000 gallons?
Mr. DeMartini: So stipulated.

By Mr. Somerville:

Q. Mr. Schumunk, at the time that you took over this station who did you talk to concerning taking over that station?
A. I first talked to Mr. Radke, the operator.
Q. What was the nature of your discussion?
A. Well, I was trading in there and I just——

Mr. Paradise: Mr. Schumunk, I am sorry. We can't hear you over here.
Mr. Somerville: Talk up, will you, please?

A. I was trading in there and I asked him if he would [fol. 2482] like to sell the station.
Q. Did you discuss the amount of inventory or stock that he would sell?
A. Not at the first time I talked to him. I did later.

Q. Did you subsequently discuss that?

A. Yes, I believe so.

Q. Did you subsequently purchase any stock of merchandise in connection with that station from Mr. Radke?

A. Yes, I purchased all of his stock.

Q. What was your inventory or how much did you invest in the station?

A. Well, I don't remember exactly but it was around $4,000, $4,500, something like that.

Q. Did you have any discussions with anyone concerning the products that you would handle or could handle?

A. I was told that we were to buy our——

Q. First of all, if you did have such a discussion, with whom and when?

A. With Mr. Graves, and I believe at the time that I purchased the station there was something said about where, and that we should buy our——

Q. And the discussions were at the station?

A. Yes, sir.

Q. Who was Mr. Graves?

A. Mr. Graves was the merchandiser.

Q. What was said?

[fol. 2483] A. Well, I don't remember exactly, but it was to imply that we were to buy all of our merchandise from their TBA setup and from Mr. Radke.

Q. Did Mr. Graves give you any instructions at that time concerning the products which you could or could not purchase from Mr. Radke?

A. No, not that I remember.

Q. Was anything said about whether or not you could handle products directly competitive to Richfield products?

A. Well, I believe so at the time that I checked in. I wouldn't say for sure. Either then or shortly after.

Q. Did you purchase only approved items?

A. Mostly. Once in a while——

Q. Have you ever purchased any competitive oils?

A. Yes, sir.

Q. And what were those oils?

A. Quaker State and I believe we had Pennzoil.

Q. Was there ever any incident that occurred concerning your handling that oil? Did you have any conversation?

A. Yes.

Q. With whom?

A. I believe Mr. Graves mentioned it several times.

Q. About when would this be?

A. I couldn't say for sure, but it was during the—it was not too long after we took the station over.

[fol. 2484] Q. And what did he say?

A. Well, he just wondered why we were not getting rid of the Quaker State oil that we had purchased from Mr. Radke at the time of the sale. He couldn't understand why it was not disappearing faster.

Q. And did you subsequently leave that station?

A. Pardon?

Q. And did you subsequently leave that station, terminate your lease?

A. Well, yes. I left there when they gave me 30 days notice to leave.

Q. That had something to do with Richfield losing its lease?

A. Yes.

Q. Will you tell us what your gallonage was during the whole period you were in the station?

A. When I started opening the station it was doing right around 9,000 gallons. At the time we sold out, it was doing eighteen.

Q. What rental did you pay during that period?

A. Well, the basic plus a cent a gallon.

Q. In other words, one cent a gallon?

A. Yes, above.

Q. Did you subsequently enter into another lease with the Richfield Oil Corporation on another service station?

[fol. 2485] A. Yes, sir.

Q. And where was that located, sir?

A. On 7th and Clair in Eugene.

Q. Did you operate that with a partner?

A. No, sir.

Mr. Somerville: May it be stipulated, counsel, that there is a service station lease on Form 542, print date 11-45, dated September 6, 1949, between Richfield Oil Corporation and R. C. Schumunk, containing a rental provision of $75.00 per month plus one cent per gallon in excess of 7,500

gallons, covering the premises at 900 West 7th Street, Eugene, Oregon?

Mr. DeMartini: So stipulated.

[fol. 2486] By Mr. Somerville:

Q. How much did you invest in this station, Mr. Schumunk?

A. $6500.

Q. Had there been a previous operator there?

A. No, sir.

Q. It was a new station?

A. Yes, sir.

Q. What was the nature of your investment in that station?

A. Stock and equipment.

Q. That would be TBA merchandise,——

A. TBA——

Q. ——oil, and the usual service station equipment?

A. Yes, sir.

Q. At that time with whom did you deal in the execution of this lease?

A. Leonard Case.

Q. Who is he?

A. The merchandiser.

Q. Did you have any discussion with him concerning the stock you should handle?

A. Yes.

Q. When did that occur, approximately?

A. At the time of the lease; at the time I leased the station.

[fol. 2487] Q. At the station?

A. Yes.

Q. What did he say, sir?

A. Well, he said, "Being a previous operator, why, you know that we buy our stuff from Commercial Supply, and they are our TBA distributor down here," and that was about all.

Q. Did you purchase TBA items from Commercial Supply?

A. Yes, sir.

Q. Did you handle any outside competitive products to those?

A. None other than oil.

Q. None other than oil?

A. Yes.

Q. What kind of oil did you handle, sir?

A. Quaker State and Pennzoil.

Q. Did you have any special reason for handling that?

A. Yes. I had for the Pennzoil, I had a trucking account that would use nothing but Pennzoil.

Q. Did you have any conversation with anyone in Richfield concerning your handling of that oil?

A. Yes, one morning when it was delivered——

Q. About when?

A. In the spring of——

Q. 1950?

[fol. 2488] A. Yes.

Q. At the station?

A. Yes.

Q. What was said?

A. In the morning they had delivered me five cases of oil, and it happened that Mr. Chapman and Mr. Case had dropped in, and Mr. Case came to me after they had left, and said that Mr. Chapman had asked him if he had seen this oil, and Mr. Case had said that he had thought it was for a trucking account that I had there, and he told Mr. Case to have me get rid of the oil.

Q. Who was Mr. Case and Mr. Chapman?

A. Mr. Chapman was the Richfield—I don't know—the merchandiser, head of the merchandising department, I believe, in Seattle. I am not sure of that. And Mr. Case is the merchandiser.

Q. Would you talk way over to this corner over here, Mr. Schmunk, so that counsel can hear you?

A. All right.

Q. Did you have any competitive suppliers call at your station? By "competitive suppliers" I mean people who were selling items that were competitive to items approved by Richfield?

A. Yes, I have.

Q. Did you purchase competitive items from these men?

[fol. 2489] A. Very seldom. The only time that I ever

did was if I was ordering parts, or something like that, that the supplier, TBA supplier, didn't handle. I might order an item, but that's all.

Q. Did they ever offer you a better deal pricewise?

A. Yes.

Q. What was your reason for not purchasing from them?

A. Well, because I couldn't take the chance.

Q. Now, was there ever any time that you were interested in handling a competitive line of tires?

A. Yes.

Q. Did you contact anybody, or did anybody contact you concerning them?

A. Yes.

Q. About when did this occur, sir?

A. It was in May, I believe.

Q. Are you talking about last year?

A. Yes, last year, '50. In May of '50.

Q. Would you describe with whom you had these conversations, and where?

A. It was the Gates Rubber Company, and it was at my station. The Gates Rubber Company representative, I should say.

Q. What was the discussion that you had at that time?

A. Well, he wanted to know if I would be interested in [fol. 2490] handling his tires, and he did offer me a very attractive deal. And being that I couldn't handle the tires, why, I suggested that he see my brother-in-law in Springfield.

Q. You were interested in the deal?

A. Yes, sir.

Q. But you didn't want to take a chance of getting in wrong?

A. That's right.

Q. Now, are you presently operating that station?

A. No, sir.

Q. Did you sell your inventory or your business to some succeeding operator?

A. Well, I didn't exactly sell it—or, I sold it, yes, but I didn't handle the deal myself.

Q. You left the station voluntarily, did you not?

A. Yes.

Q. Were you able to sell your total investment?

A. No.

Q. What was your gallonage during the period at the station? First of all, how long were you at the station?

A. I was at the station from September '49 to the first of October of '50.

Q. Could you give us some idea of what the gallonage was? How did it run during that period?

A. It started at around 10,000 gallons and dropped down [fol. 2491] to around five, and built back up to around 10,000 gallons previous to my decision to sell out.

Q. During this entire period did you pay a minimum rental of $70 a month?

A. Seventy-five.

Q. Seventy-five?

A. Yes.

Q. Plus one cent over?

A. Plus one cent over, yes.

Mr. Somerville: I think that is all.

Mr. Paradise: Over what?

By Mr. Somerville:

Q. On gasoline?

A. Pardon?

Q. That was on gasoline?

A. I paid one cent a gallon above the seventy-five minimum on gasoline.

Mr. Somerville: That is all.

Cross-examination.

By Mr. DeMartini:

Q. The rent at the first station at 12th and Sandy was $70, plus one cent over 7,000, was it not?

A. That's right.

Q. And the rent at the second station was $75, plus one cent over 7500?

[fol. 2492] A. That's right.

Q. Making a cent a gallon in each instance, isn't that correct, provided it should reach that?

A. That's right.

Mr. DeMartini: I think that is all, Mr. Schmunk.
The Court: Step down.

(Witness excused.)

The Court: Call your next witness.
Mr. Somerville: Mr. Davis.

JOSEPH DAVIS, called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: What is your name, please?
The Witness: Joseph Davis.
The Clerk: Joseph Davis. D-a-v-i-s?
The Witness: Yes, sir.

Direct examination.

By Mr. Somerville:

Q. Mr. Davis, where do you reside?
A. In Boise, Idaho.
Q. What is your present occupation or business?
A. Field engineer for the Gates Rubber Company.

Mr. Paradise: For what?
[fol. 2493] The Witness: Field engineer for the Gates Rubber Company.

By Mr. Somerville:

Q. Have you had any other positions with Gates Rubber Company?
A. Yes. I was tire market extension man for them from May, 1950, until September, 1950.
Q. Is Gates Rubber Company a manufacturer of certain automotive products that are sold to service stations?
A. Yes, sir.
Q. What are those products?
A. Oh, tires and tubes, and camel-back fan belts, and various rubber products.

Mr. Paradise: Will you speak a little louder, please, Mr. Davis? We have trouble hearing you.

The Witness: Sorry.

By Mr. Somerville:

Q. As tire market extension man, was it a part of your duties to call on service stations?

A. Yes, sir.

Q. For what purpose?

A. For creating new accounts, new sales outlets.

Q. Creating new accounts. Now, with respect to those new accounts, what particular Gates products were you attempting to sell?

A. Tires, tubes, and batteries.

Q. What was the particular area assigned to you?

[fol. 2494] A. The entire states of Oregon and Washington.

Q. Do you know where the Gates tires and tubes are manufactured?

A. In Denver, Colorado.

Q. Did you also attempt to sell batteries?

A. Yes, sir.

Q. Where were they manufactured?

A. I do not know. That was a made product.

Q. Did you ever attempt to set up a new account at a service station operated by a Mr. Rex Boyland at 1810 South Broadway in Portland?

A. Yes, sir.

Mr. Somerville: May it be stipulated, counsel, this is an L-O unit?

Mr. Paradise: Yes. And was at the time of this discussion?

Mr. Somerville: Yes.

Mr. Paradise: Yes, so stipulated.

By Mr. Somerville:

Q. Now, what were the circumstances under which you made any sales call at this station?

A. It was through an inquiry. We had a direct mail advertising plan, to which they had responded, and on which, in turn, I had made the call.

Q. About when did you call on this station?

A. In May, 1950.

[fol. 2495] Q. Did you have any discussions with Mr. Boyland concerning the Gates line of tires?

A. Yes, sir. We discussed it and created a desire to buy. The situation came up where we would put signs on the building, or at least display our merchandise there in an effort towards creating a desire to sell. So it was brought out that he could not do that, and that he would have to keep them under cover.

[fol. 2496] Q. And did you create a new account there for Gates?

A. No, sir, we would not.

Q. Calling your attention to a service station operated by John E. Larson at 1010 Northeast Sandy Boulevard in Portland, Oregon, do you recall this station?

A. Yes. That was another answer to a direct mail advertising.

Q. Did you personally call on Mr. Larson?

A. Yes, sir.

Q. When did that occur?

A. That, I believe, was also in the fifties.

Q. Did you have a conversation with him concerning his taking the Gates line?

A. We had a conversation and it led to the same thing, so which we decided to the mutual interest of both parties not to handle Gates tires.

Mr. Paradise: Could we have the same stipulation concerning Mr. Larson?

Mr. Somerville: Yes. I am sorry, Mr. Paradise.

Mr. Paradise: That Mr. Larson was an L-O operator?

Mr. Somerville: And was at that time.

Mr. Paradise: Yes, thank you.

By Mr. Somerville:

Q. Do you know a Mr. Richard Schmunk?

A. Yes, sir.

[fol. 2497] Q. The witness who was on the stand a minute ago?

A. Yes, sir.

Q. Did you ever call at his station?

A. I first called on him in May to obtain a service on my automobile, at which time we created a little sales conversation on the Gates products.

Q. What station was that

A. That was in Eugene.

Q. What transpired at that time that you called on him?

A. Well, I believe we——

Q. Did you fix the time? I do not recall. Did you fix the time of this particular instance?

A. It was along in May.

Q. Yes.

A. When I first went for the company on the entire market extension. It was just a matter of conversation. He had shown a little interest in buying. However, he brought out the fact he could not display the merchandise, but thought he might be able to handle it through his brother-in-law, Mr. Knecht in Springfield, Oregon, which later I sold to Mr. Knecht.

Q. Did you say it was his brother-in-law?

A. His brother-in-law.

Q. Was he operating a service station?

[fol. 2498] A. He operates the Knecht Tire and Oil Company in Springfield.

Q. But you have not led up to an account at that Eugene station operated by Mr. Schumunk.

A. No, sir.

Mr. Somerville: I think that will be all. Oh, it may be stipulated, counsel, that this was an L-O unit at the time of this particular incident.

Mr. Paradise: So stipulated. No questions.

Mr. Somerville: The Government calls its next witness Mr. Carlson.

FRED CARLSON, called as a witness by the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: What is your name, please?
The Witness: Fred Carlson.

Direct examination.

By Mr. Somerville:

Q. Mr. Carlson, where do you live?
A. I live in Eugene, Oregon.
Q. Eugene, Oregon. It is a nice place to live. Would you tell us what business you are in?
A. Well, I am in the wholesale automobile parts and equipment business. We deal primarily in parts, equipment, accessories.
[fol. 2499] Q. What is the name of the company?
A. Carlson & Hatton Co.
Q. Does your company deal in the usual automotive accessories that are sold to service station outlets?
A. With the exception of what you might call chrome appliances.
Q. What is the sales area in which your company operates?
A. Well, roughly, Eugene is in the center of the Willamette Valley and we cover from Eugene east to the Cascade Mountains, which is a natural division point, we cover west to the Pacific Ocean, which is also a natural point, we cover south approximately to a few miles north of Roseburg, where competition sets in, and likewise north almost to Salem, which makes an area roughly 150 miles by 80 to 90 miles.
Q. And you attempt to sell to service station outlets?
A. We attempt to sell to service station outlets, yes.
Q. Have you attempted to sell those outlets bearing the Richfield colors?
A. We have attempted to sell them.
Q. Going back to the products which your company handles, we are interested in where you get them from. Does your company handle tires and tubes?
A. We do not.
Q. Batteries?

[fol. 2500] A. Yes.

Q. What brand of batteries?

A. We handle States batteries, of which our particular division is made in Portland.

Q. Do you handle fan belts?

A. We have handled Gates.

Q. Where do you receive your shipments?

A. Those come out of the Wiggins warehouse in Portland.

Q. Do you know where they are manufactured?

A. Yes, Denver, Colorado.

Q. Have you ever handled any other line of fan belts?

A. Yes, Durkee-Atwood. They are manufactured in Minneapolis.

Q. Do you receive your shipments from Minneapolis?

A. Yes.

Q. Have you ever handled radiator hose?

A. The same places, both.

Q. What about oil filters?

A. We handle Fram oil filters and those we get out of Bingham City, Utah or Rhode Island, Providence.

Q. Battery cables is another item.

A. Well, we handle Packard cables and also Crescent cable. Packard we get either from Portland or from the factory, and Crescent we get direct from the factory, which I believe is in New Hampshire or some place around there.

[fol. 2501] Q. Does your company handle spark plugs?

A. Yes.

Q. What brands of spark plugs?

A. We handle Auto-Lite, A-C and Champion.

Q. From what source do you get those?

A. And we buy those from Trost & Co. in Portland, the Auto-Lite plugs, the Champion plugs we buy from Blue & Wright in Portland, and the A-C we buy from—there are three sources all of which are in Portland.

Q. Do you handle mufflers and tail pipes?

A. Yes, we handle Maramont automotive products, makers of mufflers and pipes, and they are made in Chicago and we buy them direct.

Q. Do you receive your shipments from there?

A. Yes. We warehouse for the area.

Q. Do you also handle chemicals, lines of polishes and waxes?

A. We handle duPont chemicals.

Q. Where do you get those?

A. Well, those come out of California. They are warehoused in California.

Q. And you receive your shipments from there. Do you maintain a stock of these items?

A. Yes, sir.

Q. What determines the amount of stock that you have on [fol. 2502] hand?

A. The amount of turnover.

Q. The monthly turnover, did you say?

A. Yes, the amount of dollars and cents turnover. We try to reach a monthly or a yearly turnover of four times our investment.

Q. Does that have any connection with the orders that you receive?

A. Yes. Of course, in our business freight is quite an item and we have to meet freight rates. In other words, there are minimum freight shipments of 100 or 150 or 200 pounds specified by the manufacturer, and we buy those products and in order to have the freight laid in we must buy their specific quantities.

Q. Are you generally successful in selling Richfield outlets?

Mr. Paradise: I object to that for lack of foundation.

The Court: It is a preliminary question. Go ahead.

The Witness: Can I answer the question?

The Court: No.

By Mr. Somerville:

Q. Have you ever called upon a service station operator by the name of Elmer Wick? Do you know that gentleman?

A. Yes, I know Elmer.

[fol. 2503] Q. Does he operate a service station handling Richfield gasoline?

A. He operates—well, he has operated two Richfield stations. He is operating one now, I think, on Sixth Street

in Eugene. He did operate one when I was calling on him, on a trouble call on him, at 11th and Pearl. Prior to that time he had operated a Shell service station.

Mr. Somerville: May it be stipulated, counsel, that both of the Richfield stations referred to are L-O units and have been during the whole period involved here?

Mr. Paradise: All right, so stipulated.

By Mr. Somerville:

Q. Did you sell Mr. Wick anything while he was operating a Shell station?

A. Yes. I——

Mr. Paradise: Objected to as immaterial.

Mr. Somerville: It is preliminary.

The Court: All right.

Mr. Somerville: I think it has a direct bearing.

A. I would say that Elmer Wick, when he was in the Shell service station, was one of our most valuable service station accounts, and that his account very rarely ran under $150 per month average, which is good for a service station operator.

Q. How far away was the Richfield station he subsequently operated?

[fol. 2504] A. The Shell station was one block away from our firm and the Richfield station was one block farther away than that, or two blocks total distance.

Q. Did you subsequently sell Mr. Wick any of your merchandise as a Richfield dealer?

A. We found from a period of tapering off—he went in, I believe, in January 1949 or thereabouts, and in the space of three or four months we were down from selling him $125 to $150 monthly, down to an average of $4 to $10 per month.

Q. Was there anything noticed concerning the type of items that he purchased in the beginning and later on?

A. Well, do you mean when he was in Shell as against when he was in Richfield?

Q. Yes, if there is any distinction.

A. Well, when he was in Shell we were able to put in a stock of merchandise.

Mr. Paradise: I object to any testimony concerning what was sold to the man while he was in the Shell station. The question of relationship between the man and Shell Company is not an issue.

The Court: Yes, I will sustain the objection.

A. Well, I will answer it this way: We were unable to put in a stock of merchandise when he was in the Richfield station. The products he bought there were primarily trouble items. If a condenser went wrong and he didn't [fol. 2505] have it in stock, he would run up and get the condenser. If there was some item of importance needed, a water pump, he would come up and buy the water pump. But it was one item, one thing at a time. We were not able to put in any complete stock of merchandise which would make it possible for us to merchandise to him in a more profitable manner for us and also give him a stock of merchandise that he could merchandise to his customer in a more profitable manner to him.

Q. Did you call on him with respect to the sharp drop in your sales?

A. Well, it was called to my attention mainly through checking my salesmen's reports. I noticed the quite considerable drop, naturally. I called the salesman and asked him about it and, of course, I knew what the drop would be. I anticipated it.

Q. Then did you subsequently call on Mr. Wick?

A. Yes, I called on Mr. Wick and took the opportunity one day to go over and talk to him.

Q. When would this be?

A. This was in the spring, because I was with a representative of Hinson Manufacturing Co. who make seat covers.

Q. Of what year?

A. This would be '49, I believe.

Q. Did you say anything to him concerning his not buy- [fol. 2506] ing?

A. Well, I asked him, "Elmer, "you can't have a customer that does a lot of business without being quite friendly to you. I originally asked him if he found any fault with our service or with our materials. And he said, "No." I asked him if business was good and he said, "Yes, busi-

ness was pretty good." We went into the discussion at that time about seat covers. He was quite interested in the assortment. It had eye appeal, it was a good value, it had a good rack. It was a piece of merchandise that could be sold. And he was quite interested in it, but he bluntly come out and told me that, while he would like to very much, he could not buy it.

Q. Did he say why he could not buy it?

A. Well, he said—and these are his words as he gave them to me, and I had asked him why it should make so much difference, because he was a good operator and I was leading up to get some information——

Mr. Paradise: Well, I object to the comments. Just the conversation, please.

A. All right, sir. What I am trying to get at is, he had said—he had been such a good operator in the past, that as soon as he was able to show Richfield Corporation that he could bring up the gas volume in that station, he was satisfied that they would leave him alone.

[fol. 2507] By Mr. Somerville:

Q. Have you at any time since that time been able to sell Mr. Wick any volume of merchandise other than these trouble items you referred to?

A. Elmer, since that time we have not been able to sell him too much. He has since—well, it is immaterial to the case.

Mr. Somerville: I think that will be all.

Mr. Paradise: No questions.

The Court: All right, step down.

Mr. Somerville: The Government calls Mr. Pearse.

Richard K. Pearse, called as a witness by the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: Richard K. Pearse.

Direct examination.

By Mr. Somerville:

Q. Mr. Pearse, where is your residence?

A. Portland, Oregon.

Q. Are you in business there?

A. Yes, I am a salesman for Peck Bros. Automotive Products.

Q. What type of automotive products that are ordinarily sold to service stations are handled by your company?

A. Well, tires, batteries, tools, filters, filter elements, and [fol. 2508] other allied lines that belong with them.

Q. Are you familiar with the source of the products that are handled by Peck Bros.?

A. Yes, sir.

Q. What brand of tires do you handle?

A. We handle two lines of tires, Pennsylvania tires and Armstrong tires.

Q. Where are the Pennsylvania tires manufactured?

A. Jeanette, Pennsylvania.

Q. How do you receive shipments?

A. Well, we receive shipment by box cars. Is that the way you mean?

Q. Yes. Where do they come from?

A. They come from the Jeanette plant in Pennsylvania.

Q. Do you maintain a warehouse?

A. We maintain a warehouse for Pennsylvania.

Q. In Pennsylvania?

A. We maintain a warehouse for the Pennsylvania Rubber Co.

Q. Oh. Where do you get the Armstrong tires?

A. From Westhaven, Connecticut and Natchez, Mississippi, and Akron, Ohio.

Q. Do they come in the same manner?

A. In the same manner.

Q. What brand of batteries do you handle and where [fol. 2509] do you receive them from?

A. We handle Willard batteries. Most of them come from Portland, Oregon, some come from the Los Angeles plant, and some from the Cleveland plant. It depends upon the type of battery that we order. We warehouse.

Q. You also maintain those in your warehouse?
A. Right.
Q. What brand of oil filters do you handle?
A. Winslow oil filters.
Q. Where do you receive shipments from?
A. Oakland, California, and we warehouse those, too.
Q. Do you handle anti-freeze?
A. Yes, we handle the Peak and One-Way anti-freeze.
Q. Where do you receive those products from?
A. Well, we receive them from the Chemical Solvents, which is where it is manufactured. I don't know. Somewhere back there.
[fol. 2510] Q. Outside of the state of Oregon?
A. That's right.
Q. What is the manner in which you receive shipments of those products?
A. The anti-freeze?
Q. Yes, sir.
A. Well, our big shipment comes to Portland, but we have stop-off points in Eugene and Medford, and our other warehouses, where we ship a partial car and drop a certain number of cases and barrels of anti-freeze at each one of those warehouses.
Q. How many salesmen does your company employ?
A. Eight wholesale salesmen.
Q. Are some of these salesmen located at different spots through Oregon and Washington?
A. Yes, sir.
Q. Are these shipments directed to these salesmen of your company in their particular area?
A. Yes, they are, and their particular warehouse. They maintain a warehouse in the town they are located in.
Q. For the purpose of supplying their customers?
A. Yes.
Q. What is the general sales area that your company sells its products in?
A. The whole state of Oregon, and southwestern Washington.
[fol. 2511] Q. How long have you been a salesman with the company?
A. Eight years.
Q. What is your sales area?

A. I cover up the Columbia River Highway as far as Biggs Junction, back through Moffett, back to Portland, and in Washington I go as far as Goldendale. Then I have all the surrounding territory of Portland.

Q. Now, one more question, concerning the moving of your merchandise, do you know what the warehouse inventory is, that is, how big a stock you maintain on hand?

A. Well, actually, I couldn't answer that, but I know that——

Q. Do you know what determines the amount that you will have on hand?

A. The amount of turnover, the amount of sales per month.

Q. Now, with respect to the particular area in which you attempt to make sales of these products, do you also attempt to make sales at service station outlets?

A. Right. Service stations and garages, both.

Q. Have you ever called on a service station operated by James Bradstreet in Goldendale, Washington?

A. Yes, sir.

Q. What brand of gasoline does he have?

A. Richfield.

[fol. 2512] Mr. Somerville: May it be stipulated that this is a leased out station, counsel?

Mr. Paradise: Yes.

Mr. Somerville: When this occurred?

Mr. Paradise: So stipulated.

By Mr. Somerville:

Q. Now, have you sold Mr. Bradstreet any of your products?

A. Yes, I sold him Armstrong tires.

Q. Can you tell us the period in which you have been making these sales?

A. Oh, he has been getting our tires for a period of two years. We sold him on the grade, that it was a better tire, and it had a better guarantee than Goodyear, and he granted that it did, because he had trouble in getting adjustments on the Goodyear tires.

Q. Did you experience any period in which he did not buy your tires?

A. Well, I almost did because—but at that time, why, Mr. Bradstreet——

Q. At what time?

A. Oh, it has been about, oh, four or five months ago, or something in that area. He came to me when I called on him and said to me, "I am going to have to quit handling your tires, because Mr. Crawford, our distributor, told me if I didn't quit handling them, they were going to kick me [fol. 2513] out."

Mr. Paradise: I object to that as hearsay. He can testify to what he talked about with a Richfield employee, but the TBA distributor, without any showing of agency or authority,——

By Mr. Somerville:

Q. Are you relating a conversation between you and Mr. Bradstreet?

A. Yes. Mr. Bradstreet told me that.

Mr. Paradise: Who is Mr. Bradstreet?

The Witness: He is the Richfield operator of the service station.

By Mr. Somerville:

Q. So did you—go ahead.

A. So he wanted to know if there was anything I could do about it. So, of course, I turned that information over to my boss, Mr. Peck, and from there I don't know where it went, but I know I still continued to sell him tires, although the tires at the time, from then on, had to be put—be obscured. In other words, he couldn't display them like he had normally displayed them before.

Q. Did he advertise them?

A. No, he couldn't put a sign up at all.

Q. Could you see them when you came by the station?

A. No.

Q. Now, do you remember ever calling on a Mr. James Ocheltree?

[fol. 2514] A. Yes.

Q. Did he operate a service station handling Richfield gasoline?

A. Yes.
Q. Where was that located?
A. Hood River, Oregon.

Mr. Somerville: May it be stipulated, counsel, that this was an L-O station?
Mr. Paradise: An L-O station on Form 542?
Mr. Somerville: Yes, sir.
Mr. DeMartini: And was at the time?
Mr. Somerville: And was at the time.
Mr. Paradise: So stipulated.
Mr. Somerville: So far as I know.

By Mr. Somerville:

Q. Are you familiar with whether you made sales to Mr. Ocheltree?
A. Yes, I made sales to him up to the time that he was put out. I sold Winslow filters, and Willard cables, and practically all of the products we handle.
Q. Did he display these Winslow oil filters?
A. No, they had to be sold under the counter.
Q. Wait a minute. Don't jump ahead. How do you know they had to be? Did you have any conversations with him?
A. Yes. He said he couldn't put them up above because they weren't Richfield approved. He had to have Puralator.
[fol. 2515] Q. When did this conversation occur?
A. Oh, shortly after I had sold him on my Winslow filters. I asked him if he wouldn't display them, and he told me at the time that he couldn't.

Mr. Somerville: I think that is all, counsel.
Mr. DeMartini: No questions.
The Court: Step down.

(Witness excused.)

John Brewington, called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

The Clerk: What is your name, please?
The Witness: John Brewington.

The Clerk: Spell that, please.
The Witness: B-r-e-w-i-n-g-t-o-n.

By Mr. Somerville:

Q. Mr. Brewington, what part of the country do you hail from?
A. Portland, Oregon.
Q. What business are you in?
A. I am now in the automotive business. I was a salesman for Peck Brothers.
[fol. 2516] Q. Is that the same company concerning which Mr. Pearse just testified?
A. Yes, sir.
Q. How long were you with Peck Brothers?
A. Fourteen months; thirteen, fourteen months.
Q. During this period did you endeavor to make sales to service station outlets?
A. Service stations, garages, and dealers were my accounts, yes, sir.
Q. Did you make some efforts to sell service stations handling Richfield gasoline and using Richfield colors?
A. Yes, sir.
Q. Do you recall a service station operated by Mr. Eppard, at 6005 North Albina, in Portland?
A. I do.

Mr. Somerville: May it be stipulated that this is a leased out station, counsel?
Mr. Paradise: Yes.
Mr. Somerville: And was during the period this witness is testifying to?
Mr. Paradise: So stipulated.

By Mr. Somerville:

Q. Do you remember when you began calling on Mr. Eppard?
A. Well, it was October, I believe, '49; somewhere around in there.
[fol. 2517] Q. Were you successful in your sales efforts at that time?
A. Only on some items.

Q. What items were those?

A. Winslow filters, a few battery cables, and a periodic battery whenever he needed it.

Q. Did he say anything with respect to—did he display those items?

A. He did not.

Q. Did he say anything with respect to the reason for not displaying them?

A. He said that—he told me he could not display them because he was a dealer for Richfield, and they didn't want him to handle other products other than Richfield products.

Q. Did he say anything with respect to whether he could handle those products at all?

A. Well, it was his own choice to handle them, but he couldn't handle them.

Would you phrase that again, sir?

Q. I was just referring to conversations that you had, and I wanted to be sure I had the full conversation.

A. He told me that he could not display my merchandise because they were not company approved by Richfield.

Q. Did he say anything with respect to his credit card [fol. 2518] privileges?

A. Yes, he was called upon by a Richfield representative——

Mr. Paradise: The question is——

By Mr. Somerville:

Q. That is what he told you?

A. Yes.

Q. O.K. Go ahead.

A. And there was some conversation about my products being in the station, so when I came around the next time I asked him why they were not displayed, and why my signs weren't up there merchandising my products, and he told me that he could not display them because Richfield would not let him.

Q. Did you ever have any discussions concerning the prices on items you had for sale?

A. Oh, yes.

Q. Was Mr. Eppard interested in your price?

A. Yes.

Q. When did these discussions occur?

A. Well, some of my prices—in other words, items are sold in deals. Some of my prices he wanted, but he could not handle them because of company policy.

Q. Did you ever see any of your products displayed in that station?

A. I did not.

Q. Did you ever sell him very many products?

A. Yes, I did periodically, in small quantities, one, two, [fol. 2519] or——

Q. Were those items that were competitive—I mean other than the Winslow oil filters—items that were competitive with items approved by Richfield?

A. Yes, sir.

Q. Did you ever call on a service station operator by the name of Mr. Sig Hanson at 4871 North Lombard, in Portland?

A. I did.

Q. When did you call on this station?

A. About the same time, in '49; in October '49.

Mr. Somerville: May it be stipulated this is a leased out station?

Mr. Paradise: Mr. Hanson was operating a leased out station?

Mr. Somerville: Yes.

Mr. Paradise: So stipulated.

By Mr. Somerville:

Q. At the time you called on this, was it a new station or an old station?

A. It was a new station.

Q. That was the first time that you had ever talked to Mr. Hanson, at the time he opened the station?

A. That's right, sir.

Q. Did you make an effort to sell him on your products?

A. I did.

[fol. 2520] Q. Was there any conversation concerning his ability to handle your products?

A. Yes.

Q. What was said?

A. Well, Mr. Hanson told me that he could not handle my products because he was held by the Richfield policy with their TBA set-up.

Q. Did you ever sell any of your products to Mr. Hanson?

A. Yes.

Q. Specifically what?

A. I sold him tires, Armstrong tires.

Q. Did he display your tires?

A. No.

Q. Did you deliver them to his station?

A. Yes.

Q. Did he ever give you any instructions concerning delivery of those tires?

A. No.

Q. Would those sales be during periods when Goodyear tires were available, do you know?

A. I could not sell him my tires when he had a complete stock of Goodyear tires, but when he could not get tires, that is the only time I could sell him tires.

Q. Was that at his station?

[fol. 2521] A. Yes, sir.

Q. Do you recall a service station operated by a Mr. Pickler?

A. Yes, sir.

Q. Where is that located?

A. That is up on Willamette Boulevard.

Q. In Portland?

A. Yes.

Mr. Somerville: May it be stipulated this station operated by Mr. Pickler is a leased out unit, and was during this whole period involved?

Mr. Paradise: Yes. Leased out by Richfield to Mr. Pickler?

Mr. Somerville: Yes.

Mr. Paradise: So stipulated.

By Mr. Somerville:

Q. When did you call on this station?

A. October, 1949.

Q. Were you successful in selling him any of your products?

A. Yes.

Q. What products did you sell?

A. I sold him tires, batteries, filters, cables, and so forth.

Q. Did Mr. Pickler display these items?

[fol. 2522] A. No.

Q. Did you ever have any conversation with him concerning the display of these items in connection with making a sale?

A. Yes.

Q. About when? Do you recall the specific time?

A. About November, or about a month after I at first sold him on my items.

Q. In Portland, Oregon?

A. Yes.

Q. What did he say? This occurred at the station, I presume?

A. Yes. I asked him why he didn't display my items, and he told me he could not put up signs or merchandise my products, that he had to conceal them in order to handle them.

Q. Did you ever notice where he concealed them? Did he ever tell you where he concealed them?

A. Yes. They were concealed in the upper part of the ladies' restroom.

Q. Do you ever recall calling on a service station operated by F. Milton Boyer on Northeast Lombard and Alberta, in Portland?

A. Yes, sir.

Q. When did you call on that station?

[fol. 2523] A. About the same time as the others, October, '49.

Q. Did you sell him anything?

A. I did not.

Q. Did you explain your prices, what your prices were, and what products you had to sell?

A. I explained them to him, yes.

Q. Did he indicate any interest in the products?

A. Yes, he did indicate interest.

Mr. Paradise: Will it also be stipulated that Mr. Boyer was an L-O operator on Form 542?

Mr. Somerville: Yes, sir.

Mr. Paradise: Thank you.

By Mr. Somerville:

Q. Did he say anything with respect to whether he could handle these products?

A. Yes, he said he could not handle the products, my products.

Q. And you have never sold him anything?

A. I have never sold him anything.

Q. Do you recall a service station operated by Warren D. Chandler?

A. I do.

Q. Where is that located?

A. 21st and Northeast Broadway.

Mr. Somerville: May it be stipulated that this was an L-O station at this particular time?

[fol. 2524] Mr. Paradise: Yes. Is it stipulated these are on the same 24-hour Form 542 lease?

Mr. Somerville: It is a Form 542 lease. I can't stipulate whether it was the old form or the new form, counsel.

Mr. Paradise: Well, if you cannot so stipulate, I think we had best put in the particular instrument in each case.

Mr. Somerville: Possibly so.

(Conference between counsel.)

Mr. Somerville: We stipulate that this Form 542 has a 24-hour clause.

Mr. Paradise: I think perhaps for the purpose of the record the stipulation between the parties which is on file as Defendant's Exhibit A does contain a stipulation that all of these 542 forms which have been entered into subsequent to 1941 do contain the 24-hour clause, and that all those that were in existence prior to that time had been amended to the 24-hour clause. Am I correct?

Mr. Somerville: I will stipulate that is correct.

Mr. Paradise: Thank you.

By Mr. Somerville:

Q. Did you ever sell any of your products to Mr. Chandler?

A. No, only small items, a few dollars and cents.

Q. Were those items that were competitive to Richfield approved products?

A. The same brands.

[fol. 2525] Q. What do you mean, the same brands? Give us an illustration, if you will?

A. Valve core caps are made by Schrader or Dill.

Q. Are you familiar with what brands are approved by Richfield?

A. I believe Dill is.

Q. So they were the same items?

A. They were.

Q. Did you have any discussion with Mr. Chandler concerning whether or not he could handle your products?

A. I did.

Q. When did that occur?

A. When he took over the new unit.

Q. And that was at his station?

A. Yes.

Q. What did he say to you?

A. Well, he—Mr. Chandler told me that he could not buy my products because he was forced to handle the Richfield line of merchandise.

Q. Had you been selling your products to Mr. Chandler prior to his operating this station?

A. Yes.

Q. He was familiar with them, then?

A. Yes.

Q. Did he ever indicate any dissatisfaction with them?

[fol. 2526] A. No.

Q. Did any of these men that you have testified to indicate any dissatisfaction in connection with your sales attempts of your products?

A. No.

Mr. Somerville: That is all. You may take the witness.

Mr. Paradise: No questions.

The Court: All right, step down.

(Witness excused.)

The Court: Let's have a short recess.

(A short recess was taken.)

[fol. 2527] The Court: All right.
Mr. Somerville: Mr. McMullin for the Government.

CLAYTON D. McMULLIN, called as a witness for the plaintiff, being forst sworn, was examined and testified as follows:

The Clerk: What is your name, please?
The Witness: Clayton D. McMullin.

Direct examination.

By Mr. Somerville:

Q. What is your name, sir?
A. Clayton D. McMullin.
Q. Where do you live?
A. I live in Sacramento, California.
Q. Are you in business there?
A. Well, I am a sales representative of the Quaker State Oil Refining Co. of California.
Q. Is that the manufacturing company manufacturing Quaker State oil, lubricating oils and greases?
A. It is a subsidiary of the mother company. The California company is a subsidiary of the Quaker State Oil Refining Corporation.
Q. How long have you held this position, Mr. McMullin?
A. 14 years.
Q. Where do you receive your shipments of Quaker State oils and greases?
[fol. 2528] A. In Sacramento, California.
Q. That is, where do you place your orders for them?
A. We place them through to the Los Angeles office, through Oil City, Pennsylvania.
Q. Do you maintain a stock of oil and greases in Sacramento?
A. We do.
Q. What determines the amount you have on hand?
A. Well, seasonal sales. We determine our order by the time of the year. In other words, our sales, we control our orders as we project our ordering over a period of

three months, because of the fact that it comes around by water and it takes approximately three months from the time we place our orders until that order arrives in Sacramento. We base our ordering on previous sales.

Q. How often are you receiving shipments, approximately?

A. Well, they will average one car load a week at least, more, more than average a car a week in Sacramento proper.

Q. What particular area do you supply?

A. Direct operations out of Sacramento, the area is 150 miles long and 100 miles wide, making our operations headquarters in Sacramento.

Q. Are you familiar with the Richfield brands of lubricating oils and greases?

[fol. 2529] A. Yes, I am.

Q. I am speaking now competitively. Are their products comparable to those oils and greases?

A. In quality, yes, sir.

Q. And the grades?

A. Yes, sir.

Q. Do you sell service station accounts?

A. Yes, we do.

Q. Calling your attention to a service station operated by a Mr. Ben Oliver at 700 Texas Street, Fairfield, California, are you familiar with that particular dealer or operator?

A. Yes, I am, or, rather, I was.

Q. Have you ever made any sales of Quaker State to this man?

A. Yes, I have.

Mr. Somerville: May it be stipulated, counsel, that this particular unit was an L-O unit during that period?

Mr. Paradise: So stipulated.

Mr. DeMartini: Will you fix the time, please?

By Mr. Somerville:

Q. Will you place the time that you were making sales of these products?

A. As near as I can remember it, it was in the fall of '46 and the spring of '47.

Mr. Paradise: It is also stipulated that Mr. Oliver was the L-O operator of that unit.

[fol. 2530] Mr. Somerville: Yes.

Q. Was Mr. Oliver a good account of yours?

A. Yes, he was.

Q. At any time did he cease purchasing your oils?

A. Yes.

Q. About when did that occur?

A. In the early part of '47.

[fol. 2531] Q. Did you have any conversation with him concerning his not buying any more oil from your company?

A. Yes, I did.

Q. Where did that occur?

A. At his place of business in Fairfield.

Q. What was the time, now?

A. That was around the first of the year, in '47. I am not quite sure of the exact date.

Q. Were any other parties present at that time?

A. Not as I recall, no.

Q. Did you say anything to Mr. Oliver concerning his not buying any of your products?

A. I asked him why.

Q. What did he say?

A. I asked him if there was any reason, anything that we had done to force him to discontinue his business with us. Naturally, we were very much interested in those points. In fact, he said, "No, no, not at all." As a matter of fact, that he would like very much to continue with the Quaker State Oil, but Mr. Harris, who was the commission agent in Fairfield, where he was at that time, had called on him to take it out, not only discontinue handling it, but take out what he had in there at that time, and not take any more, or his lease would be broken.

Q. Thereafter did you make any more sales to that man?

[fol. 2532] A. No.

Q. Did you ever call on a service station operated by a George Foltz in Orland, California?

A. Yes.

Q. Have you sold him Quaker State products?

A. Yes.

Q. You have sold him?

A. Yes.

Q. Do you know in what period you were selling this man?

A. It was just about the same time, I think in the last three months, or the last half of '46, as I recall.

Q. At that particular outlet, in connection with Mr. Foltz, did you have any period when he discontinued buying your products?

A. Yes.

Q. When did that occur?

A. At about the same time as Mr. Oliver, the first part of '47.

Q. Did you contact Mr. Foltz regarding that?

A. Yes, sir.

Q. At his place of business?

A. Yes, sir.

Q. And what did he say?

Mr. Paradise: May we have a stipulation, counsel, con-[fol. 2533] cerning Mr. Foltz and the nature of the outlet?

Mr. Somerville: Yes. Mr. Foltz operated an L-O station at this particular time.

Mr. Paradise: Yes, so stipulated.

The Witness: Well, it was very nearly the same as I got from Mr. Ben Oliver, that he was told by the commission agent in Orland to discontinue the sales of Quaker State oil, or they would break the lease.

By Mr. Somerville:

Q. Then did you sell him any more oil?

A. No.

Q. Did you subsequently call at this station at a time when there was a new operator?

A. Yes.

Q. What was the name of that operator?

A. Reese.

Q. Walter L. Reese?

A. Reese, yes, that's it.

Mr. Somerville: May it be stipulated, counsel, that Mr. Reese was a Form 542 L-O operator that followed Mr. Foltz?

Mr. DeMartini: He was at the same station?

Mr, Somerville: At the same station.
Mr. Paradise: So stipulated.

By Mr. Somerville:

Q. Approximately when did you call on Mr. Reese?
[fol. 2534] A. That was shortly after. He took over the same unit that Mr. Foltz gave up. That was in the first part of '47.

Q. Were you able to sell Mr. Reese anything?

A. Yes, we were.

Q. Did that continue all during the period that he was operating that station?

A. No. I imagine that we sold him over a period of three months.

Q. Did he discontinue?

A. He discontinued under the same conditions as Mr. George Foltz did, because the pressure was put on by the Richfield Oil commission agent, and he was forced to discontinue the sale of Quaker State.

Q. By the way, did he display the oil at the time he was buying from you?

A. No, he did not.

Q. And Mr. Foltz displayed the oil?

A. I think he attempted to. As I recall, he put some on the shelf in the station, but he was called on doing that, and he definitely put——

Q. Now, you are talking about a conversation,—did you have some conversation with him?

A. Yes, I did.

[fol. 2535] Q. At his station?

A. Yes.

Q. About when would that be?

A. The first part of '47.

Q. What did he say about the display?

A. He displayed the oil, and the commission agent told him he could not handle it any more, and he then put it under the counter, and the agent discovered it there, and that was the beginning of the end of his lease with Quaker—I mean with Richfield Oil Company.

Q. What do you call the signs you refer to?

A. We have several types of signs. The most popular is a curb sign.
Q. Did any of these men display a curb sign?
A. No, they didn't.
Q. Did you offer to supply them with some?
A. Oh, yes, very happy to.
Q. Is that a part of your usual approach?
A. Oh, yes.
Q. And all of them declined to take the signs?
A. Yes.

Mr. Somerville: That will be all.
Mr. DeMartini: No questions.
The Court: Step down.

(Witness excused.)

[fol. 2536] Mr. Somerville: The government calls Mr. Hurd.

James Hurd, called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination:

The Clerk: What is your name, please?
The Witness: James Hurd, H-u-r-d.
The Clerk: James Hurd. Thank you.

By Mr. Somerville:

Q. What is your name, sir?
A. James Hurd.
Q. Will you tell us where you live?
A. Salem, Oregon.
Q. What business are you currently in? What is your employment?
A. Well, I am an L-O operator for Richfield Oil Corporation.
Q. How long have you operated this station, Mr. Hurd?
A. It will be four years in July.
Q. It is what you call a leased out station?
A. That's right.

Mr. Somerville: May it be stipulated, counsel, that Richfield, as lessor, entered into a 542 lease, print date 11-45, [fol. 2537] with James G. Hurd, as lessee, covering the premises at 590 North High Street, and specifying a minimum rental of $40 per month, plus one cent per gallon in excess of 4,000 gallons.

Mr. DeMartini: It is so stipulated, and the lease is dated July 14, 1947, and it is at Salem, Oregon.

Mr. Somerville: At Salem, Oregon. And that there is a rider attached, executed March 2, 1948, specifying a minimum rental of $62 a month.

Mr. DeMartini: Not a minimum rental, a flat rental.

Mr. Somerville: A flat rental.

Mr. DeMartini: There is no gallonage rental.

Mr. Somerville: That is correct. And then there is a subsequent lease between the same parties, dated April 30, 1948, covering the same premises, on Form 542, print date 11-45, specifying a flat rental of $62 a month.

Mr. DeMartini: But no added gallonage rental.

Mr. Somerville: That is correct, sir.

Mr. DeMartini: So stipulated.

[fol. 2538] By Mr. Somerville:

Q. At the time that you entered into the first lease involved here, Mr. Hurd, did you have any discussions with —first of all, who did you deal with in the execution of this lease?

A. Well, our territorial merchandiser at that time was William H. Loop.

Q. Were there any discussions concerning the 24-hour cancellation clause of that lease?

A. Well, that was understood. We knew it, both.

Mr. Paradise: I can't hear you.

A. I knew it. I knew it was in the contract, yes, the lease.

By Mr. Somerville:

Q. Did you have any discussions concerning the conditions under which that 24-hour clause was to be exercised? Were you told under what circumstances that might be exercised?

A. Well, how do you mean?

Q. What I am trying to get at is, did you have any conversation of any character concerning the conditions under which the 24-hour clause would be exercised? Did they tell you under what circumstances a 24-hour notice might be served upon you?

A. No.

Q. Did Mr. Loop turn over the premises to you?

A. Yes, sir.

[fol. 2539] Q. Did you invest any money in this station?

A. Not in the property, the stock and equipment.

Q. Oh, I meant did you invest any money in the business?

A. Yes.

Q. What did that investment consist of?

A. It was a little over $8,000.

Q. What was included in it, what merchandise or equipment were included in that?

A. Stock and equipment.

Q. Did that include some merchandise that you purchased from the former operator of the station?

A. Yes, all of it.

Q. All of the whole business. Was there any competitive merchandise, competitive in the sense there was an equivalent approved item sold through the TBA distributors?

A. Yes.

Q. What were some of those competitive items you purchased?

A. Zenith tires, Lincoln batteries and filter elements.

Q. Did you subsequently have any discussions with any Richfield representatives concerning the Zenith tires or Lincoln batteries?

A. Yes.

Q. With whom?

A. Loop and Hayworth.

[fol. 2540] Q. Who is Mr. Hayworth?

A. He was manager for the Salem distributorship.

Q. The Salem Distributing Company, the authorized TBA distributors?

A. No. I mean he was the Salem agent for Richfield Oil Corporation.

Q. Oh, I see. Did these conversations occur with both men present?

A. No.

Q. Oh, you had two conversations, then. Let us take one at a time, then. First of all, Mr. Loop, about when did you talk to Mr. Loop?

A. The fall of 1947.

Q. What did Mr. Loop say to you?

A. He advised me to replace the tires, batteries and tubes, and any other merchandise in there with approved products.

Q. When did you talk to Mr. Hayworth?

A. In 1948.

Q. And what did he say concerning the products?

A. He said the same thing.

Q. Did he tell you to get rid of them?

A. Yes, sir.

Q. What did you do? Did you get rid of them?

A. Well, eventually I replaced them.

Q. Was there any particular advantage to you in han-
[fol. 2541] dling these products?

A. I had a competitive price line in the other products.

Q. Did you have any desire to continue handling these products?

A. Yes.

Q. Did you have any particular customers that wanted Zenith tires?

A. Yes.

Q. Were those customers you had previously sold Zenith tires to?

A. Yes.

Q. Did you have customers who would like—what brand of batteries were those?

A. Lincolns.

Q. Did you have some customers who asked for Lincoln batteries?

A. Not necessarily by name. They wanted a lower priced battery. They are a competitive line.

Q. Was that lower priced?

A. Yes.

Q. Than the Goodyear approved battery?

A. Yes.

Q. With respect to fan belts, did you have any competitive fan belts?

[fol. 2542] A. They were practically all competitive.

Q. What brands?

A. Oh, Gates, Raybestos, Greyrock.

Q. Did you have any situation arise in which your attention was called to the fact that you were handling competitive belts?

A. At the time that I went into this station we had agents there that were replaced in 1948 with Richfield operators, the plant there in Salem was. And he came in one day, one of these agents, in 1947, the fall of '47, and took all the fan belts down and put Goodyear sleeves on them.

Q. And did you thereafter replace those belts with Goodyear approved belts?

A. Most of the time.

Q. Was there any particular advantage to you in handling those belts?

A. In handling Goodyear?

Q. In handling the Gates or other competitive belts. Did you have customers that asked for them?

A. Not necessarily, not for fan belts.

Q. Was there any price advantage?

A. No.

Q. Did you ever handle any competitive oils?

A. Yes.

Q. What kind, what brands?

[fol. 2543] A. Quaker State.

Q. Did you display this oil?

A. No.

Q. Did you have any reason for not displaying it?

A. I was told not to.

Q. By whom?

A. Mr. Loop, Mr. Hayworth, and Mr. Lalande.

Q. When?

A. Practically all of them.

Q. When?

A. From the time I went in there.

Q. Did you have any customers who requested these oils?

A. Yes.

Q. Did you ever have competitive salesmen? I am talking about salesmen other than your TBA distributors of products at the station?

A. Yes.

Q. Did they sometimes offer other automotive accessories at a better price than you were able to get?

A. Sometimes.

Q. Did they ever offer items that were approved at a better price than the TBA distributors?

A. The prices were the same. They were fair-traded.

Mr. Somerville: Your witness.

Mr. Paradise: No questions. Oh, wait a minute. Forgive [fol. 2544] me. No questions.

Mr. Somerville: The Government calls Mr. Tyler Brown.

Tyler J. Brown, called as a witness by the plaintiff, being first sworn, was examined and testified as follows:

The Witness: Tyler J. Brown.

Direct examination.

By Mr. Somerville:

Q. Where do you reside, Mr. Brown?

A. Salem, Oregon.

Q. What business are you currently in?

A. Well, I am used car manager for the Nash dealer at the present time. Up until that time I was employed by R. D. Woodrow Company, distributor of parts and accessories for 11 years.

Q. Did the R. D. Woodrow Company supply the usual automotive line of accessories that were handled at service stations?

A. Yes, they did.

Q. What was the particular area in which that company made its sales?

A. We covered five counties out of Salem.

Q. Are you familiar with the products and the sources of the products that were handled by R. W. Woodrow Company?

A. It is R. D. Woodrow Company. Yes, I am.

[fol. 2545] Q. Did the company handle tires?

A. Tires, batteries, battery cables, wiring terminals, light globes, Champion spark plugs, various and sundry.

Q. Will you tell us the brand of tires handled by the com-

pany and the source from which it received its supplies of those tires.

A. Well, we carried the Kelly-Springfield tire which was warehoused by Kelly-Springfield Tire Company in Portland, and also the Seiberling tire, which was warehoused in Portland. That is where we got both tires.

Q. Were those warehouses of the tire manufacturers?

A. Yes.

Q. Do you know where the tires were manufactured?

A. Well, I don't recall, no.

Q. What kind of batteries do you handle?

A. Willard.

Q. Where do you receive your Willard batteries?

A. Well, we received a great number of them from Los Angeles and some from Cleveland. Towards the end of the season, I think they built the factory in, I believe, '48 or somewheres in '48 in Portland. We got a few from Portland towards the end of my time I was there.

Q. Would the same be true of battery cables?

A. Yes, we ordered those through Willard.

Q. What brand of fan belt?

[fol. 2546] A. Dayton.

Q. And where do you receive those belts from?

A. From Portland, the jobber in Portland.

Q. Were they manufactured in Portland?

A. No. I believe in Dayton, Ohio.

Q. Did you handle spark plugs?

A. Yes, Champion.

Q. Are you familiar with what brands of spark plugs are authorized or approved by Richfield?

A. Yes, Champion, also.

Q. Did you handle light bulbs and various automobile lights?

A. We did, General Electric globes made by the General Electric Company.

Q. What brand is Richfield approved?

A. General Electric.

Q. Did you handle oil filters?

A. Yes, Cyclone. They were manufactured in Yoncalla, Oregon, about 35 miles out of Portland.

Q. How often were you receiving shipments of these items?

A. Well, we would place orders about every month on practically all of our items, according to how fast the turnover was. Our batteries we would order every month, along with cables at the same time, tires would be the same. Passenger cars, of course, we would order more of than we [fol. 2547] would truck tires, but it was according to what the turnover was.

Q. I believe you testified that you were a salesman. What particular area did you sell in?

A. I covered the City of Salem and five counties out of Salem.

Q. I call your attention to a service station on North Front and Center Street operated by a Lawrence C. Anderson. That is in Salem. Do you remember the particular station?

A. Yes, I do.

Mr. Somerville: It may be stipulated, counsel, that Mr. Anderson operates a leased out station and did during the period to which this witness will testify.

Mr. Paradise: So stipulated. That is on a Form 542?

Mr. Somerville: Yes, sir.

Mr. Paradise: Okay.

By Mr. Somerville:

Q. What period—first of all, did you make any sales to Mr. Anderson? Did you develop an account there?

A. Well, yes, I did, during the war—oh, I would say the latter part of '41 or '2 we sold him merchandise. Of course, the supplies were very hard to get then. You could sell them to Standard Oil if you wanted to.

[fol. 2548] Q. Would you call this account a good account?

A. Yes, during that time, when supplies were short.

Q. Did he continue to buy after the war?

A. Well, he did up until about the latter part of '46, I would say, or '7. Then it dwindled down. I was talking to him one day to find out what the score was, because——

Q. About when was that? About in '47?

A. Yes, '47, or the latter part of '46. I think the latter part of '46. The sales were dropping off.

Q. Where were you talking to him?

A. In his station.

Q. Was there anyone else present?

A. There could have been, but I didn't pay any attention.

Q. Tell us what was said.

A. He said, "Now that the oil company is getting more supplies, why, they are putting the heat on me to buy some of theirs." I did continue selling him some tires and batteries, but they kept them out in the back room, hid. But the sales dropped down quite a bit. Of course, tires and batteries were very scarce at that time.

Q. Did he indicate why he couldn't handle these items?

A. Well, yes, it was just the same old story, that they just can't do it.

However, there were some items I did continue selling [fol. 2549] them, such as spark plugs. They couldn't tell the difference on that. I could put spark plugs in there, and unless they checked his records on what he was selling, they wouldn't know the difference. The same with light globes.

Q. Was the decline in the sales you were making to Mr. Anderson abrupt?

A. Well, it seemed to be tapering off quite rapidly.

Q. Did he ever indicate any dissatisfaction with your products?

A. No.

Q. Did he ever indicate satisfaction?

A. Well, yes, he liked to carry the—well, especially the tires. It was a competitive tire, and we gave him a better price on it. And the Willard batteries, he had several customers that would ask for Willard batteries. There are a lot of cars that come equipped with Willard batteries, and they want the same thing put back in their automobiles.

Q. Did he tell you that at any time?

A. Yes. That was the reason he put them in the back there, so he could have them on hand and wouldn't have to come over to get them, or we might be closed when he would be needing them.

Q. Now, do you recall a service station operator by the name of Albert Espey at 867 South Commercial Street, in Portland?

[fol. 2550] A. In Salem?

Q. In Salem.

A. In Salem, yes.

Mr. Somerville: May it also be stipulated that this was an L-O station on a 542 lease?

Mr. Paradise: Yes, at all times during the time that this witness testifies to, the station was operated by Mr. Espey under an L-O lease.

Mr. Somerville: During all the time I expect him to testify to.

Mr. Paradise: So stipulated.

By Mr. Somerville:

Q. Mr. Brown, did you make any sales of your products to this man?

A. No, I didn't.

Q. Did you personally call on the station?

A. I did.

Q. When?

A. Well, it was shortly after he opened up. I just can't recall the date. It was probably in '47, the last of '47 or '8. I am not sure on that, but it was shortly after he opened the station, or shortly after he went in there.

Q. Did he say anything to you about whether he could buy from you?

A. Well, naturally, when you first go in to call on a man on opening his station, you start trying to sell your line [fol. 2551] to him, of course, and I didn't get very far until he told me he was obligated to buy from the Richfield Oil Company, that that was his understanding when he went into the station, that he had to buy their products. So I called there about three or four times, and quit calling on him.

Q. You didn't sell him anything?

A. No.

Q. Did you ever call on a service station operated by Mr. Hurd, at 590 North High Street, Salem, Oregon?

A. Yes.

Q. Is that the gentleman who just testified?

A. That's right.

Q. Over what period did you call on him?

A. Well, that was shortly after he had opened up, or bought out the other operator. I believe it was in '46, or '47, or '8; or the latter part of '47.

Mr. Paradise: Just for clarity in the record, Mr. Hurd was an L-O operator in a Richfield station at that time?

Mr. Somerville: Yes, sir.

By Mr. Somerville:

Q. Did you sell him any of your products after you called on him?

A. Well, no. He had about the same set-up as Mr. Espey's set-up. I did have one item that I sold him, which was an Ansco window wiper cabinet. It was quite a deal. At the time Richfield was not handling those. They do now, [fol. 2552] however, have them in their line, but at that time that was the only item that I had that I was able to sell him which Richfield didn't display.

Q. Did Mr. Hurd tell you that, that Richfield didn't handle the Ansco wiper?

A. Oh, yes. He liked the deal all right, and being Richfield didn't handle them, I suppose he was able to put them in.

Q. I am only interested in what he actually told you, now. At any time did you have any discussions with him concerning his ability to purchase items from you?

A. Well, he would like to, but it seems like—if that is what you mean. I don't quite get your question there.

Q. Yes, what I mean is, did you have any conversations concerning his lack of purchases from you, or your inability to sell him?

A. Oh, no, not that. It was just that he couldn't buy any of the items that Richfield had.

Q. Did you have some conversation with respect to the items that he could buy from you?

A. Well, yes, but I had nothing that I could sell him—not sell him—I mean, that he could buy without Richfield seeing it, unless he would hide it.

Q. What was the item you were able to sell this man?

A. Hurd?

[fol. 2553] Q. Yes.

A. Well, that cabinet deal was all I was ever able to sell him.

Q. What do you mean by "cabinet"?

A. It is a cabinet of the windshield wipes, blades, and so

forth. It is a cabinet, and one blade will take care of all the needs.

Q. Did you ever call on a service station operated by Albert Rupp, at 1026 North Commercial Street, Salem, Oregon?

A. Yes.

Q. Is that the one they call the Commercial Street "Y"?

A. Well, it is in a Y. I have lived there for thirty years, but I don't know whether they call it that or not. Maybe they do, but that's where it is located.

Q. When did you first call on Mr. Rupp?

A. Well, you got me there, too.

Mr. Somerville: May it be stipulated that this is an L-O station under Form 542?

Mr. Paradise: So stipulated.

By Mr. Somerville:

Q. Did you ever sell any of your products to Mr. Rupp?

A. No, I didn't.

Q. Did you have any conversations with him at that time concerning his buying your products?

[fols. 2554-2557] A. Yes, shortly after he moved in there, I called on him, as I always did.

Q. What did he tell you at that time?

A. Well, he said that he was obligated, or indicated as much, that he would have to buy from Richfield, that he could not buy my batteries or tires, whatever I might have. So I called on him about twice, and I never called on him any more.

Mr. Somerville: Your witness, counsel.

Mr. Paradise: No questions.

Mr. Somerville: Thank you, Mr. Brown.

The Court: Step down.

(Witness excused.)

Mr. Somerville: If the court please, we have run out of witnesses on time.

The Court: That is a good time to run out.

I gather, the way you are going, you intend to finish tomorrow?

Mr. Dixon: I think that is correct, your Honor, yes.
The Court: I beg pardon?
Mr. Dixon: I believe we will, your Honor, yes.
The Court: All right. Tomorrow morning at 10:00 o'clock.

(Whereupon at 4:55 o'clock p. m., Tuesday, May 22, 1951, an adjournment was taken until 10:00 o'clock a. m., Wednesday, May 23, 1951.)

[fol. 2558] The Court: All right, gentlemen, proceed.
Mr. Alexander: The Government will call Mr. Behm as its first witness, please.
ARTHUR A. BEHM, called as a witness by the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: What is your name, sir?
The Witness: Arthur A. Behm.

Direct examination.

By Mr. Alexander:

Q. Where do you live, Mr. Behm?
A. Manhattan Beach.
Q. What is the nature of your occupation or business?
A. I am a tire salesman for the Leland A. Irish, Inc., distributor of Kelly-Springfield tires and Exide batteries.
Q. Will you describe briefly the source from which your firm obtains the merchandise?
A. We distribute Kellys, which are the Kelly-Springfield Rubber Co. of Cumberland, Maryland, and Exide batteries, I believe, is by the Electric Storage Battery Co. of Philadelphia.
Q. What is the territory of operations in which your company conducts its sales and marketing?
[fol. 2559] A. Our company?
Q. That is, your firm, yes, sir.
A. Primarily Southern California where the metropolitan distributors have Kelly-Springfield tires, primarily.
Q. Does it employ outside salesmen?
A. Four.
Q. Four salesmen?

A. Yes, sir.

Q. In your capacity as a salesman do you regularly call on service station accounts in the sale of those Kelly-Springfield tires and Exide batteries?

A. Yes. I call on approximately 50 retail outlets, service stations of all kinds.

Q. Do you call on service stations bearing the Richfield colors, selling Richfield gasoline?

A. I did. I don't now.

Mr. Alexander: Counsel, will it be stipulated that the locations of the operators that this witness will testify to will be L-O operators?

Mr. Paradise: Yes, in L-O stations of Richfield.

By Mr. Alexander:

Q. Calling your attention, Mr. Behm, to the service station located at 1138 Highland Avenue, Manhattan Beach, operated by Benny Jones, have you called on that station and attempted to make sales of your merchandise?

A. No, sir, I don't, not now. I did.

[fol. 2560] Q. No, I say, have you?

A. Oh, yes. I was calling on there when I was told not to call there.

Q. You have called on that station?

A. Yes, sir.

Q. Calling your attention to the years 1945 and 1946, did you attempt to make sales of tires and batteries at this location?

A. Yes, sir.

Q. Were you successful?

A. I had been selling them right along until I was ordered by the supervisor not to call there any more.

Q. Mr. Behm, did you have conversations with Mr. Jones or any representatives of Richfield Oil Corporation in connection with your sales of tires or batteries at this location?

A. Yes. I had been selling Mr. Jones for some time when a supervisor by the name of Benny Vaughn, I met him there one morning when I was delivering two tires.

Q. Excuse me just a moment, Mr. Behm. When was this, approximately?

A. About 1945 or '46. And Mr. Vaughn became very

angry and said they had a considerable investment in that location and it was not their policy for Mr. Jones to purchase from anyone other than their suppliers, I believe Goodyear at the time was their regular source of supply. [fol. 2561] We had quite a heated argument, because I thought I should have a right to call on the account.

Mr. Paradise: I move that that be stricken.

Mr. Alexander: Just conversations, Mr. Behm.

The Court: That is a conclusion.

A. I told him I would continue to call there, that I had a right to call on an account. I had sold previous operators there for some time, and that I would continue to call there. And Mr. Vaughn told Mr. Jones in my presence that if he continued to buy from me, he would lower the boom on him. What that meant I don't know. That was his exact words.

[fol. 2562] By Mr. Alexander:

Q. Mr. Behm, calling your attention to a service station at the corner of Imperial and Sepulveda Boulevard in Los Angeles, operated by Mr. Ray Scofield, have you attempted to make sales of your merchandise at that location?

A. Yes, sir. Ray Scofield was a good outlet of mine until I met the same gentleman, Mr. Vaughn, there.

Q. Excuse me. When did this take place, Mr. Behm?

A. About the same time, that is, I believe between '45 and '46. Mr. Scofield had the station, and the same thing occurred there. I was delivering Kelly-Springfield tires and Exide batteries, and Mr. Vaughn told Mr. Scofield that he would have to purchase Goodyear batteries and not to buy any more Exides from me.

Q. Did you thereafter make any attempt to make sales at that location?

A. Well, I found it rather futile, because they put the operator in a bad light, so that my business practically stopped then.

Mr. Alexander: No further questions.

Cross-examination.

By Mr. DeMartini:

Q. How do you pronounce your name,—is it Behm or Behm?

[fol. 2563] A. Behm.

Q. You stated you call upon fifty accounts?

A. Various service stations throughout the south Bay area, yes, sir.

Q. How many of those do you sell?

A. Well, I would say I do a little business with most of them.

Q. How often do you call upon these accounts that you sell?

A. I call on them approximately twice a week, depending on the service they require, and they phone me a great many times when they want merchandise. I actually sell and deliver the merchandise in a half-ton truck.

Q. How many times do you call upon an account as a rule to whom you can't sell before you give it up as a bad job?

A. That would depend on my reaction to the account, I would say.

Q. Do these people normally give reasons for not buying from you?

A. Oh, not necessarily. Sometimes they——

Q. Do they ever give reasons?

A. Yes, I would say sometimes that they don't particularly like my product, or for some reason they don't want my service.

[fol. 2564] Q. How long have you been in this business, Mr. Behm?

A. I have been with this firm I am with now for 25 years. I went with them in 1926.

Q. Do you supply advertising signs?

A. Yes, sir. Yes, sir, we do.

Mr. DeMartini: I think that is all.

Mr. Alexander: Just one further question, your Honor.

Redirect Examination.

By Mr. Alexander:

Q. Mr. Behm, in response to Mr. DeMartini's questions you said you called on approximately 50 accounts?

A. Yes, sir.

Q. What oil companies' colors are being displayed on these various service station outlets that you call on?

A. Oh, I don't pay any attention to that. I go into all service stations.

Q. Perhaps I can help you, Mr. Behm. Do you call on Shell stations?

A. Yes, sir.

Q. Do you call on Standard stations?

A. Yes, sir.

Q. Do you call on Tide Water stations?

A. Yes, sir.

Q. That is what I had in mind, sir.

[fol. 2565] I simply cover the territory where they retail tires and batteries, regardless of what sign they display.

Mr. Alexander: That is all, Mr. Behm. No further questions, your Honor.

The Court: You may step down.

(Witness excused.)

Mr. Alexander: The government will call Mr. Poseley.

Jerome F. Poseley, called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination:

The Clerk: What is your name, please?

The Witness: Jerome F. Poseley.

The Clerk: The spelling of your last name?

The Witness: P-o-s-e-l-e-y.

By Mr. Alexander:

Q. Where do you live, Mr. Poseley?

A. Santa Monica.

Q. What is the nature of your business?

A. I am a salesman for Boggs & McBurney.

Q. What is the nature of the business of Boggs & McBurney?

A. We are automotive parts jobbers, handling tools, [fol. 2566] parts, and supplies.

Q. What is the area in which the Boggs-McBurney Company carries on its operations?

A. Roughly, West Los Angeles.

Q. Are you familiar, Mr. Poseley, with the source of the merchandise that you sell for your firm?

A. Yes, I am.

Q. Will you relate some of the products that are sold and are handled by Boggs & McBurney

A. We carry Raybestos brake lining and fan belts. That is manufactured in Bridgeport, Connecticut. We carry Fram filters manufactured in Providence, Rhode Island. Champion spark plugs manufactured in Toledo, Ohio, and Exide batteries, and Puralators. More?

Q. Do you know the approximate amount of the volume of business that is done by your firm in the sale of this merchandise?

A. Yes, sir. It runs around $200,000 a year.

Q. How long have you been employed in this capacity?

A. I went to work for Boggs & McBurney in November of '44.

Q. In the course of your selling this merchandise, have you called upon service stations bearing the Richfield Oil Corporation's colors?

A. Yes, I have, sir.

[fol. 2567] Mr. Alexander: Counsel, may it be stipulated that the service station locations that this witness will testify to are L-O stations?

Mr. Paradise: So stipulated, all L-O stations.

Q. By Mr. Alexander: Calling your attention, Mr. Poseley, to a station located at 531 South Sepulveda Boulevard, West Los Angeles, operated by Mr. Ray Shillito, are you acquainted with this operator?

A. Yes, I am.

Q. Have you attempted to make sales of your merchandise at this location?

A. Yes, I have.

Q. When did these attempts occur, Mr. Poseley?

A. When I started to work for Boggs & McBurney I called on Ray Shillito. That was in November '44, and I sold him quite a lot of merchandise in '45 and '46. In about '47, why, business began to taper off, and one of the lines

that I sold him was Exide batteries, and Ray told me that he couldn't possibly handle them any more, because Richfield was putting the pressure on him, and he would just have to stop. I also sold him Rislone filter cartridges, spark plugs, which I no longer sell him for this reason: he told me he had a 24-hour lease, that he had been there for a long time and worked up a good business, and he couldn't possibly antagonize Richfield, although he would like to buy [fol. 2568] some of my products, and still does, things that Richfield doesn't handle.

Q. Do you handle, your firm, the Richfield approved merchandise?

A. We handle a lot of it, yes. We handle Champion spark plugs, Puralator fan belts, Rislone, Casite, things like that, Stamp radiator caps.

Q. Mr. Poseley, calling your attention to a service station located at 1401 Westwood Boulevard, West Los Angeles, operated by a person by the name of George Lance, have you attempted to make sales of your merchandise at that location?

A. Yes, I have.

Q. About when did these attempts occur?

A. Approximately the same time. George Lance was one of our very good customers, bought all his batteries from us, and had quite a lot of brake lining and ignition work that we sold him, and at the end of about '46 he told me that as much as he would like to buy Exide batteries, he couldn't possibly do it, because he had to keep on good terms with Richfield, and he couldn't possibly continue to buy my batteries.

[fol. 2569] Q. Did you have any further conversations with him?

A. Well, I called. The station is now handled or run by Bruce Nudd who used to work for him and I call on them, still call on them every two weeks. I still sell them ignition brake-lining, things like that, always have, tools, but I can't sell them anything that Richfield handles. He says he just can't do it.

Q. Have you had any conversation with Mr. Nudd in attempting to sell your merchandise?

A. The same conversations. I asked him just a little while ago if he would buy these heater hoses which he

needed, and he said, "Don't be silly. I can't buy that heater hose, Poseley, and you know it."

Q. Calling your attention to a service station at 1501 Santa Monica Boulevard operated by George Lance, have you attempted to make sales at that location?

A. Yes, I have. When George opened that station he called me on the telephone and told me to come down, and he bought a lot of tools and different supplies that he needed, that he couldn't buy from Richfield. At that time I asked him if I could sell him any Puralators or spark plugs to open his new station, and he laughed and he said, "You know darn well I can't do that, Poseley."

Q. About when did this take place, Mr. Poseley?

A. Well, that was last summer.

[fol. 2570] Q. 1950?

A. Yes, sir.

Q. Calling your attention then to a service station located at Westwood and Pico, Los Angeles, operated by Mr. Al Olson, have you attempted to make sales of your merchandise at that location?

A. Yes, I have. Mr. Olson also is a customer of ours, and anything that Richfield doesn't have, starters, generators and things like that. When he first opened, I sold him some Fram filter cartridges.

Q. Mr. Poseley, about when was that, if you know?

A. I believe that was about three years ago.

Q. 1947 or '48?

A. I think it was in '47 that Al took over that station and I sold him some C-4 Frams, which are standard equipment of Fords, and which he said he thought he ought to have. And the next time I came around they were hidden down under the counter and he said that he couldn't buy them from me any more because, in order to get tires, which were short at that time, why, he had nothing that Richfield didn't sell or any line that they didn't have, he had to stock only their line.

Q. Calling your attention to a service station located at 10350 Olympic Boulevard operated by a Lou Snyder, did you attempt to make sales of your merchandise at that location?

[fol. 2571] A. Yes, I have. He was running that.

Q. When did that occur, Mr. Poseley?

A. In 1945 and 1946.

Q. Did you have a conversation with Mr. Snyder in that connection?

A. Yes, I have. Lou Snyder was running that station when I started to call on him, and at first I sold him quite a lot of filter cartridges and Casite and spark plugs. But it wasn't over about—oh, I would say nine months or a year before Lou told me it was impossible to buy any of those products from me any more, but he would continue and did continue to buy other things that Richfield didn't have that we handled, like other generators and mufflers and things like that.

Q. But none of the approved merchandise?

A. None of the approved merchandise would he buy from me.

Mr. Alexander: No further questions.

Mr. Paradise: No questions.

The Court: All right.

Mr. Alexander: The Government will call Mr. Marx.

CASPER E. MARX, called as a witness by the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: What is your name, please?

[fol. 2572] The Witness: Casper E. Marx.

Direct Examination.

By Mr. Alexander:

Q. Where do you live, Mr. Marx?

A. In Eagle Rock.

Q. Eagle Rock. What is the nature of your employment?

A. I am a salesman.

Q. Have you ever been employed by the Hal Moody Tire Company?

A. Yes.

Q. When did this employment occur?

A. From 1946 until November of last year, 1950.

Q. What is the type of business of Hal Moody Tire Co.?

A. It has a Fisk line, tire distributor, battery distributor.

Q. What is the area in which he markets his products?

A. Glendale, Highland Park, Burbank, Hollywood, in that area.

Q. Are you familiar with the source from which the Hal Moody Tire Co. obtains its merchandise?

A. Well, the Fisk line comes from Chicopee Falls, Massachusetts, Pennsylvania tires were Jeanette, Pennsylvania, Exide batteries, I believe it is Philadelphia.

Q. Were you familiar during your employment there with approximately the amount of annual average volume [fol. 2573] of business done by this company?

A. I would say it was between sixty and seventy-five thousand dollars a year.

Mr. Alexander: Counsel, may it be stipulated that Mr. Marx's testimony will pertain to L-O stations only?

Mr. Paradise: So stipulated.

By Mr. Alexander:

Q. Mr. Marx, calling your attention to a service station located at 600 West Glenoaks in Glendale, operated by Mr. M. D. Whiting, are you acquainted with this location?

A. Yes.

Q. Have you attempted to make sales of your merchandise at that station?

A. Yes.

Q. Did you have conversations with Mr. Whiting during these periods?

A. About 19—I think it was around—'47, I sold him some Pennsylvania tires. I believe there were six or eight, something like that.

Q. Did you have any conversations with him in connection with that sale?

A. Oh yes. Only that he said that he couldn't keep the tires in the station and he carried them in the back of his car, in the trunk of his car.

Q. In other words, they were not openly displayed? [fol. 2574] A. No.

Q. Did you subsequently have any discussions with him in attempting to sell tires or batteries?

A. On Exide batteries he agreed that Exide was a good battery, but he couldn't possibly stock them or display them.

Q. Calling your attention to a service station located at 3810 North Figueroa Street, Los Angeles, operated by Mr. Carlin McKnight, have you attempted to make sales of your products at that location?

A. Yes.

Q. Do you recall having had any conversation with Mr. McKnight in that connection?

A. At one time we had a deal with, I believe it was Nickel Silver batteries that we would furnish his stand. He said he would like to handle the batteries and he could certainly use the stand but he could not possbly put them in the station.

Q. Did he tell you the reason why he could not?

A. Well, because of the supervisor of Richfield, of course, would bring him to task on it and there would be some involving there, that he would just as soon not get into with Richfield Company.

Q. Calling your attention to a service station located at 874 Vermont Street, Los Angeles, operated by Mr. George Enright, have you attempted to make sales of your tires or [fol. 2575] batteries at that location?

A. Yes. I have sold him tires and batteries, too. He would never display them and the batteries were kept under one of the shelves and covered up, and the tires in most cases were not displayed. There would be one in a second line or something like that.

Q. And did you ever have any conversations with Mr. Enright in connection with the displaying or purchasing of your merchandise?

A. Well, the reason was because of his agreement or his arrangement with Richfield, he couldn't display anything like that and handle it.

Q. Calling your attention to a service station located at Grand View and San Fernando Road in Glendale operated by Mr. Sam Aeschlian, have you attempted to make sales of your merchandise at that location?

A. Yes.

Q. Will you describe to the court the circumstances under which those attempts took place?

A. How is that?

Q. Will you describe to the court what took place during those attempts to make sales?

A. Well, the product would be accepted, as he would like to handle them, but he couldn't display them or have them in the station.

[fol. 2576] Q. Did he tell you the reason why he could not do so?

A. Because of his arrangement with Richfield Oil Co.

Q. Did he make any complaint as to the quality of your merchandise?

A. No.

Q. He apparently was satisfied?

A. Never for that reason.

Q. In connection with each one of these customers that you have testified to did any of them make complaints as to the quality of your merchandise?

A. Never.

Mr. Alexander: No further questions, your honor.

Mr. Paradise: No questions.

The Court: All right, call your next witness.

Mr. Somerville: The Government calls Ralph Long.

Ralph E. Long, called as a witness by the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: Ralph E. Long.

Direct Examination:

By Mr. Somerville:

Q. Mr. Long, would you tell us where you reside?

A. LaGrande, Oregon.

Q. What is your present business or occupation?

[fol. 2577] A. I am a salesman for Roy Farnham Supply Co.

Q. Will you describe to the court the type of products that Roy Farnham Supply Co. market?

A. We supply the locality there. We specialize in general parts and radiator items such as sealers, flushes, addatives to oil.

Q. Does your company sell products to service station accounts?

A. Yes.

Q. What would some of those products be?

A. Exide batteries, Fram filters, Gates fan belts, Rislone petroleum solvent products, seals such as that, Packard cables.

Q. With respect to the Gates fan belts from where do you receive your supplies of those belts?

A. We receive our supply from Portland.

Q. Do you know whether that is a manufacturer's representative or——

A. No. That is a warehouse.

Q. A warehouse.

A. Yes.

Q. Do you know where those belts are manufactured?

A. I have seen where they were manufactured in Denver on some of them. They are manufactured in various parts of the country, depending upon where they draw their [fol. 2578] supply from.

Q. On Exide batteries would you tell the court from what source you receive Exide batteries?

A. Electric Storage Battery Co. They are shipped to us from Portland but they are ordered through Seattle. They have a warehouse there in Portland, and then they come from the east.

Q. Do you know where those batteries are manufactured?

A. I believe it is Pennsylvania.

Q. What type of filters does your company deal in?

A. Fram.

Q. Fram, and from what source do you obtain the Fram filters?

A. We receive them from a warehouse in Portland, and then they are manufactured in Providence, Rhode Island, I believe.

Q. I believe you testified that you handle Packard battery cables, is that correct?

A. Yes.

Q. From where do you receive those?

A. We receive those directly from the factory.

Q. Where is that located?

A. I am sorry, I can't tell you. It is an eastern city.

Q. Outside of the state?

A. Outside of the state, yes.

[fol. 2579] Q. Do you handle chemical lines, waxes and polishes and the usual chemicals, radiator seals that are sold at service stations?

A. We handle duPont's products, Max products which are represented by sealers and cleaners, polishes and waxes.

Q. And from what sources do you obtain the particular products?

A. The majority of them come out of a warehouse in Portland, although they are received from different localities over the country out of there, from out of state.

Q. Do you receive some shipments direct from manufacturers outside the State of Oregon?

A. Yes, depending upon the amount of the order. We do receive direct shipments on duPont items from out of state.

Q. Do you handle spark plugs?

A. Champion.

Q. From what source do you receive spark plugs—Champion spark plugs?

A. Depending on the quantity again. Small quantities come out of Portland and we get direct shipments from factories on other orders.

Q. Do you happen to know where the factories are located?

A. I believe that is Pennsylvania. I am not in that department.

[fol. 2580] The Court: But not in the State of Oregon?

The Witness: No. They are definitely not in the State of Oregon.

The Court: They are out of state?

The Witness: Out of state, yes.

Q. By Mr. Somerville: Do you happen to be familiar with the brand of spark plugs approved by Richfield and advertised at Richfield stations?

A. Champion.

Q. Do you handle piston rings?

A. Perfect Circle piston rings.

Q. From where do you receive the piston rings?

A. Well, we receive some from our warehouse in Portland, and also, depending on the volume of the order, sometimes directly from Hagerstown, Pennsylvania.

Q. What is the particular area in which your company markets these products?

A. Generally, it is Union, Cove County, and Baker County, which takes in Haines, North Powder, Union, LeGrande, Cove, for my particular territory. We have another representative who covers——

Q. How many salesmen does your company employ who would contact service station outlets?

A. Two.

Q. And what is your particular area?

[fol. 2581] A. The ones I just named, that I just gave you the names of.

Q. Do you recall ever calling at a station operated by Ralph Hardy and Richard Parsons at Fourth and Spring Streets, LeGrande, Oregon?

A. Yes.

Mr. Somerville: May it be stipulated, counsel, that this is an L-O unit?

Mr. Paradise: So stipulated.

By Mr. Somerville:

Q. Approximately when did you first call at these stations?

A. I called when they first opened up. I believe it was in about March originally when they first opened.

Q. March of what year?

A. Of '49.

Q. Did you attempt to sell your products?

A. Yes.

Q. Were you generally successful?

A. Well, not too much so, no.

Q. Were you able to sell them some Champion spark plugs?

A. Only on fill-in orders.

Q. Did you ever attempt to sell your Exide batteries to this station?

A. Yes.

Q. Do you recall any particular incident in which you [fol. 2582] explained your price and your guarantee on these batteries?

A. Yes.

Q. About when did that occur?

A. That occurred in August, last year.

Q. And with whom were you talking?

A. Ralph Hardy.

Q. At the station?

A. At the station, yes.

Q. In the course of the discussions were there any comparisons made with prices of Goodyear batteries between your batteries and Goodyear?

A. On the price structure, my prices on the particular batteries were a little cheaper.

Q. Was there any discussion at that time concerning whether or not these men operating the station could purchase competitive products?

A. Yes. Mr. Hardy told me that he liked my battery very well, he liked our guarantee, would like to handle the batteries, but that under his contract with the oil company he would be unable to do so, that is, he could not stock it.

Q. He could not stock it?

A. He could not stock the batteries.

Q. Were you subsequently able to sell him any?

A. Very few.

[fol. 2583] Q. Was that during the period of battery shortages?

A. No, not necessarily battery shortages. There could have been a slight shortage at that particular time.

Q. Under what circumstances did he buy those batteries? Did he display them?

A. No, he wouldn't display them. He couldn't display them, so he told me. He would have to sell his customers, and then he would pick them up, or we would deliver them to him.

Q. Now, with respect to a service station there in La-Grande, operated by Kenneth Gregory, does that strike a familiar chord?

A. Yes, it does.

Q. Where is his station located?

A. His approximate address I couldn't give you.

Q. Is it Penn & Pine?

A. Yes, sir, that is the right address.

Q. How long have you called on Mr. Gregory?

A. I believe it has been three years now that he has been in that station.

Q. Have you made some sales to Mr. Gregory?

A. Yes.

Mr. Paradise: Do we have the same stipulation concerning the service station operated by Mr. Gregory?

Mr. Somerville: Yes. I am sorry.

[fol. 2584] Mr. Paradise: That it is a Richfield L-O station?

Mr. Somerville: It is a Richfield L-O station.

Mr. Paradise: Thank you.

By Mr. Somerville:

Q. Do you recall any instance in which, or, did you have any conversations with Mr. Gregory concerning whether or not he could purchase products from you at any time?

A. Yes, he has said that——

Q. About when? We would like to fix the time, as nearly as you can remember, Mr. Long.

A. I believe it was in January of this year.

Q. Were any other parties present?

A. No, I don't believe there were.

Q. Did that occur at the station?

A. Yes.

Q. What was said at that time?

A. Well, the particular conversation that we had at that particular time was about tires. He had been handling General tires, and it seems as though the oil company was——

Q. You are talking now about what he was telling you?

A. Yes.

Q. All right. Go ahead.

A. It seems as though the oil company was very much opposed to him handling anything but their own line of tires, and he was in doubt of the extension of his lease if he [fol. 2585] continued with the General tire.

Mr. Somerville: That will be all.

Mr. Paradise: No questions.

The Court: All right. Step down.

(Witness excused.)

Mr. Somerville: The government calls as its next witness Mr. Rayle.

GEORGE RAYLE, called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

The Clerk: What is your name, please?
The Witness: George Rayle, R-a-y-l-e.

By Mr. Somerville:

Q. Mr. Rayle, where is your residence?
A. Arcadia, California.
Q. What is your present business or employment?
A. I am a salesman for the Quaker State refinery.
Q. The offices of that company are local, are they?
A. In Los Angeles.
Q. What are the particular products that are handled by your company?
A. Oils and greases.
[fol. 2586] Q. Are those Quaker State motor oils?
A. Yes, sir, Quaker State oil and Quaker State grease.
Q. Are you familiar with the Richfield brands of lubricating oils and greases?
A. Some of them. Their gasoline, and I know they have two or three brands of oil.
Q. Are your oils competitive to the Richfield brands of lubricating oils?
A. You mean from the standpoint of price?
Q. Well, I mean——
A. Or quality?
Q. I mean from the standpoint of their uses, their weights, or quality.
A. That's right. I would say they are used for the same purposes, if that is what you mean.

Q. Yes.

A. Their weights, S.A.E. ratings, and where they come from, or where they are manufactured——

Q. No, I think you have answered my question there. I really don't want to develop the particular points of salability, but just if they are comparable products. Are you familiar with the sources from which your company obtains its supply of Quaker State motor oil and greases?

A. I understand they are producers in the Pennsylvania fields, and their head office is in Oil City, Pennsylvania.

[fol. 2587] Q. Do you receive shipments directly from Oil City, Pennsylvania?

A. I am under the impression it is shipped in here to Los Angeles or to the Harbor by tanker, and distributed from this area for the three western states.

Q. What is the particular area in which you make sales?

A. It is Pasadena, Alhambra, Highland Park.

Q. Do you make calls on service station accounts?

A. Yes, sir.

Q. Have you ever made a call on a service station operated by a man by the name of Warren E. Lester, who is located at 416 West Las Tunas, San Gabriel?

A. I believe about a year ago I met the gentleman in a coffee shop across the street from the service station.

Mr. Somerville: May it be stipulated at this time that this station was a leased-out station?

Mr. Paradise: Yes, so stipulated. Leased out by Richfield.

The Witness: He said he had just taken over the service station, or had just taken the lease on this station, and he would like to handle Quaker State.

By Mr. Somerville:

Q. And you were making an effort to sell him, I presume?

A. I asked him why we couldn't sell him a little bit, [fol. 2588] so he tried to explain why we couldn't.

Q. What did he say?

A. He said according to his lease that he wasn't able to handle our merchandise, although he did have customers that would like to have it, and he was bringing up a case

or two at a time from his brother's station in, I believe, Maywood, and just keeping it in his car.

Q. Did he say whether his brother's station was handling Richfield gasoline?

A. No.

Mr. Paradise: I object to that.

By Mr. Somerville:

Q. Do you make any sales to Mr. Lester?

A. No, I do not.

Q. I call your attention to a service station operated by a man by the name of Mr. George Bauer. Are you familiar with this particular station?

A. Yes, I remember.

Q. Located at 2990 East Huntington Drive, San Marino?

A. Yes, sir.

Mr. Somerville: May the record show that the service station at this address, operated by George A. Bauer, is a leased out station, and that Mr. Bauer was a witness in this case earlier in the trial.

By Mr. Somerville:

Q. About when did you first call on Mr. Bauer?

[fol. 2589] A. Well, the first and last time I called on him was May 27, 1950.

Q. At that time did you sell him any Quaker State oil?

A. No. He said that he had purchased some from our driver off of the trucks, and that he had had several cases there on hand, and the supervisor told him that he had to dispose of it one way or another. He said he eventually opened the cans and emptied them into his highboy, Richfield's highboy, in order to dispose of the product.

Q. On instructions from the supervisor?

A. That's what he said, yes, sir.

Q. Did he purchase any more from you at that time?

A. No, he didn't.

Q. Do you recall ever having sold him any after that?

A. No, sir. He said he would like to buy again when the heat was off.

Q. Now, have you ever called at a station operated by

James Battles, at 800 East Valley Boulevard, in San Gabriel?

A. Yes, I did, sir.

Q. About when would that be?

A. I believe it was the same day, May the 27th.

Q. At his station?

[fol. 2590] A. Yes, sir.

Q. Did you go through your usual sales talk with him?

A. Well, Mr. Battles at the time was not, as I recall it, he wasn't in. I talked to one of the boys there.

Mr. Paradise: Now, just a moment, please.

Mr. Somerville: Do we have a stipulation?

Mr. Paradise: Yes, we have a stipulation that this Mr. Battles was an L-O operator at the time.

Mr. Somerville: Yes.

Mr. Paradise: Now, this witness is going to testify to a conversation with someone else.

Mr. Somerville: I will try to catch that. We will stipulate this was a service station operated by Mr. James Battles at the time, and was a leased out station.

Mr. Paradise: Thank you.

By Mr. Somerville:

Q. Now, will you continue?

A. One of the operators that morning said that they weren't able to handle Quaker State, and that they had a few cases on hand, and the supervisor had purchased those three cases, and taken them off the premises, in order to dispose of the merchandise from that corner.

Q. Did you sell him any Quaker State?

A. No, sir.

Q. Did you ever go back to that station?

A. I have never called on him again.

[fol. 2591] Q. Do you recall ever calling on a station operated by Clyde Fisher at 2255 Huntington Drive, San Marino, California?

A. Yes, sir.

Mr. Somerville: May it be stipulated that this was a leased out station at this particular time?

Mr. Paradise: So stipulated.

By Mr. Somerville:

Q. About when did you make this call?

A. Approximately the same time.

Q. As your call on Battles?

A. Yes, sir.

Q. Did you sell him anything on that first visit?

A. No, sir, he wasn't sold. He had been sold in the past. He had called in or the driver had made deliveries there. That was my first call on him, though.

Q. Did you have any discussion with him about handling your oil at that time, about whether he could handle it?

A. Well, he said that he was told that he couldn't handle it, according to his lease, and he had several customers that were good gasoline customers that wanted the product, and at the time he did have several cases on hand, which he kept—I believe, as I remember, he said he kept them in Richfield cartons, kept the cans in Richfield cartons so they wouldn't be seen by the supervisor. At the time he said [fol. 2592] he had been told directly by the manager of the Pasadena plant, and he had received his instructions from Los Angeles to not allow us to sell at that particular place or through their leased stations.

Q. And have you sold any since then?

A. No, sir.

Q. Now, there is a service station operated by Robert E. Marty, at 101 Pasadena Avenue, South Pasadena, California. Have you ever called at that station?

A. Yes, sir. I called there at approximately the same time.

Mr. Somerville: One moment, please. May it be stipulated, counsel, that Mr. Marty's station is also a leased out station with the usual type of lease?

Mr. Paradise: So stipulated.

By Mr. Somerville:

Q. About when did you call?

A. I believe it was the same date.

Q. What did Mr. Marty say, if anything, concerning whether he could buy your products?

A. He said he was not able to handle other products

other than Richfield, although he had customers who wanted the product, and at the time he purchased a case for some *particular customer, and he kept it in his car.*

Q. Did you observe what he did with the case?

A. No. Of course, I didn't make the delivery myself. [fol. 2593] He said he would have to keep it in the trunk compartment of his car.

Mr. Somerville: You may have the witness, counsel.

Mr. Paradise: No questions.

The Court: You may step down.

(Witness excused.)

The Court: Let's have a short recess.

(A short recess was taken.)

Mr. Somerville: The government calls Mr. Cleveland.

SIDNEY C. CLEVELAND, called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

The Clerk: What is your name, please?

The Witness: Sidney C. Cleveland.

The Clerk: How do you spell the first name?

The Witness: S-i-d-n-e-y.

By Mr. Somerville:

Q. Mr. Cleveland, where do you live?

A. I live in Hillsboro, Oregon.

Q. At the present time what is your occupation or employment?

A. Salesman for the Christianson Oil Company, Portland, [fol. 2594] Oregon.

Q. How long have you been with the Christianson Oil Company as a salesman?

A. As a salesman about two years; employed by the same company about seventeen years.

Q. Are you familiar with the products sold by the Chris-

tianson Oil Company and the sources from which it receives those products?

A. Yes, I am, sir.

Q. Does your company distribute petroleum products and automotive accessories that are sold to service station outlets?

A. Yes, we do.

Q. What are some of the oils that your company has handled during the period?

A. Well, we handle Wolfhead motor grease, and Quaker State, and Real Penn motor oil out of Oil City, Pennsylvania.

Q. On your Quaker State oil, where do you receive or where did you receive your supply,—in Portland?

A. Well, the Motor Oil Sales Company in Portland is the distributor, but we received all of our shipments directly out of Oil City, Pennsylvania.

Q. During what period have you handled Quaker State oil?

A. Oh, I presume we handled it from about '44 to about [fol. 2595] '49—'48—'49, I guess it was.

Q. Quaker State products, does that include lubricating oils in the cans? And greases?

A. That included your motor lubricating oils and your greases.

Q. Have you handled MacMillan Ring-Free oil?

A. Yes, we handled MacMillan Ring-Free from Mitchell, Lewis & Staver in Portland. That was shipped from back East. I believe it was out of Arkansas, or Oklahoma, I don't know which.

Q. That is, you ordered it from Mitchell, Lewis & Staver?

A. Yes, sir.

Q. And it was shipped directly from the refinery?

A. Yes, sir.

Q. Now, I believe you mentioned Wolfhead oil. Who manufactures that, and where did you receive it from?

A. That is manufactured by the Wolfhead Corporation of Oil City, Pennsylvania.

Q. And you receive your shipments direct?

A. We receive our shipments direct.

Q. Do you receive any oil manufactured or refined by the Real Penn Oil Company?

A. Yes, we do. The Real Penn Oil Company, under its permit number, of Pennsylvania Motor Oil, and it is handled [fol. 2596] under our brand of "Real Penn."

Q. What brands of greases do you handle other than Quaker State?

A. We handle the Ultra-Fel manufactured by the Battenfeld Oil Company of Kansas City, Kansas.

Q. How do you receive it?

A. We received it direct, and have handled it for approximately 15 years.

Q. Do you know how often, how frequently, you have been receiving shipments of these products during the particular period you have been handling them?

A. Well, at the present, outside of Quaker State, we are not handling the Quaker State any more, but at the time we were handling Quaker State we were handling around one to two cars of either products, a week, of grease or oils. Some of the products were coming in continuously all the time.

Q. Do you know what determines your inventory or the amount you would have available in your warehouse?

A. No, I don't.

Q. What brand of tires does your company handle?

A. We handle the Miller tires out of Los Angeles, and the Brunswick tires out of Los Angeles, and the National tire from the Gates people out of Denver.

Q. And you receive them from each of those locations?

A. From each of those direct.

[fol. 2597] Q. How often do you receive the shipments in cars?

A. Well, at the present day, whenever we can get them.

Q. What is the normal situation? How many do you keep on hand?

A. Well, we keep a complete line, if that is what you mean. We keep a good-sized stock, yes.

Q. As you receive orders from your customers?

A. They are filled, except for the present situation, as it is now.

Q. Do you handle batteries?

A. Yes, we handle the A-C battery. They are manufactured by the States Battery Company of Portland and

Seattle. We receive shipments direct from Seattle when they have had the Portland plant down.

Q. Do you handle any other brand of battery?

A. Yes, we handle the Prest-O-Lite battery out of Oakland, California.

Q. During what period have you handled those batteries?

A. We have handled those, I presume, from approximately 1945 up to the present time.

Q. Are batteries an item that you stock for any considerable length of time?

A. No. We try to keep them on hand a short length of time, so that the battery will not deteriorate.

Q. You are receiving shipments frequently, are you?

[fol. 2598] A. Yes.

Q. Do you handle fan belts?

A. Yes. We handle the Miller fan belts out of California, and radiator hoses.

Q. By "out of California" you mean you receive shipments from California?

A. Yes, from Los Angeles.

Q. Do you handle the usual automotive chemicals, waxes, polishes, and radiator flushes, and the like?

A. Yes, we do, from the Hollingshead Company of Los Angeles, the Whiz products, Motor Rhythm, brake fluid, and similar items, waxes, and so forth.

Q. Do you handle anti-freeze?

A. Yes, we do.

Q. State who manufactures that, and from what sources you receive your shipments.

A. Well, we have different sources we get it from. At the time in regards—well, we were handling Thermo. That comes from back East. I'm not sure, but I think it is from Pennsylvania, and that shipment was directed to us in carload lots.

Q. Would you describe to the court, Mr. Cleveland, the marketing area in which you sell these products?

A. I sell some in my own territory, from Reedville, and down into Astoria, and down the Coast and up into Rose-

[fol. 2599] burg, and from Tigard down the Coast.

Q. How many salesmen does your company employ?

A. Four.

Q. I am talking about the over-all marketing area of the company, not your particular sales area.

A. We handle Oregon and Washington.

Q. Are there ever any instances in which any of the products that you purchase from out of state sources that are received in drop shipments from points other than Portland?

A. You mean shipped direct to some of our accounts?

Q. Yes.

A. Yes, we have.

Q. What products?

A. Oh, we have shipped Miller tires, and Hollingshead Whiz products, and States batteries directly to some of my accounts, such as the Junction Garage at Wallport would be one of the instances.

Q. Now, did you make a sale of any of these products in the State of Washington, where it moved from your warehouse in Portland to the accounts in Washington?

A. It is according to the product they buy, and what quantity they buy,——

Q. Or would that come directly from the manufacturer?

A. —whether it would come directly from the manufacturer or whether it would come out of our stock.

[fol. 2600] Q. Now, with respect to your particular sales efforts, are you familiar with a service station at Reedville, Oregon operated by Frank Ogburn?

A. Yes, I am, a Richfield service station.

Mr. Somerville: I would like the record to show that Government's Exhibits 22 to 22-F are certain agreements between Richfield and R. R. Mathis, and that Mr. Ogburn testified Friday concerning his operation of that station under arrangements with Mr. Mathis, and that it was a 3-C type of outlet.

The Court: All right.

By Mr. Somerville:

Q. About when did you call on this station, Mr. Cleveland?

A. In the early part of June 1949.

Q. And did you sell any products to Mr. Ogburn?

A. Not the first time, no, but the second time I sold——

Mr. Paradise: Now, wait a minute. Forgive me, Mr. Somerville.

Mr. Somerville: Go ahead.

A. The first time, no. The second time, five cases of Quaker State.

Q. When did that occur?

A. That was in the latter part of June.

Q. Did you observe whether or not he displayed that Quaker State oil?

[fol. 2601] A. It was not. It was put in a cupboard in his lube room under lock and key. He said he had to keep it out of sight.

Mr. Paradise: Wait a moment. Object to any conversation with Mr. Ogburn.

By Mr. Somerville:

Q. Did you have any conversation at that time, sir?

A. Yes, we did, sir.

Q. At the station?

A. Yes, we did.

Q. And were there any other parties present?

A. At that time, I wouldn't swear.

Q. None to your memory?

A. Yes.

Q. And what were the conversations at that time?

Mr. Paradise: Objected to on the ground that it is hearsay and immaterial. Mr. Ogburn had no contract, written or oral, with Richfield and he so testified.

Mr. Somerville: If your Honor please, there is no distinction of the principle between this sort of a situation and the situation which existed at a leased out station. The evidence in the record in connection with this particular situation, in connection with Mr. Ogburn's testimony shows that there was——

The Court: I will overrule the objection. We will argue [fol. 2602] the legal effect later. Overruled. Go ahead.

A. Mr. Ogburn placed the Quaker State in his lube room under lock and key in one of the closets, and said he had

to keep it out of sight because he had to handle nothing but Richfield products.

By Mr. Somerville:

Q. Did you subsequently sell some automotive accessories to Mr. Ogburn?

A. Yes. We sold some A-C batteries. They were kept in his station part in a cabinet, down underneath where he kept what Goodyear batteries he had for display. Now, the A-C batteries were not displayed.

Q. Did he say at that time why he would not display the A-C batteries?

A. Yes. For the same reason he didn't display the Quaker State, because it was not handled by Richfield.

Q. Did you at any time receive any instructions from Mr. Ogburn as to the manner in which any deliveries of products from your company would be made to him?

A. Yes, we received——

Q. And when did you receive such instructions?

A. Well, if I remember correctly, it was sometime in July. We had made a couple of deliveries of the Quaker State to his station, and I think it was the second or third time the Richfield representative come in and he was put on, as you might say, the pan. Then we gave our truck [fol. 2603] drivers instructions not to stop there if he saw the Richfield truck or any of their representatives.

Q. You were acting under instructions from Mr. Ogburn?

A. From Mr. Ogburn, that is correct, sir. And then he later gave instructions that everything was to be delivered to his home in Portland and he would bring it out as he needed it.

Q. Did you ever deliver any bulk oil to Mr. Ogburn's home?

A. Yes, we have. It was delivered to his home in five-gallon cans in which he hauled it out to his station.

Q. How many cans?

A. In five-gallon cans, that is, that is not the amount. It was put in five-gallon cans, whatever the quantity was he ordered, so that he could haul it out to his station.

Q. Did you have any discussions with him about displaying tires?

A. Yes. We sold him some Miller tires.

Q. About when did this occur, now?

A. Oh, that occurred around in July of '49. He wanted to handle our tires previous to that, but he kind of held off because——

Mr. Paradise: The question calls for conversation.

[fol. 2604] The Court: Are you telling us what he said?

The Witness: Yes.

The Court: All right.

By Mr. Somerville:

Q. What did he say, sir?

Mr. Paradise: This objection runs to the entire line of testimony.

The Court: Yes, it may be so understood.

A. He said that he wanted to handle our tires because we carried a 15-month guarantee or 15,000 miles on the tire, which Goodyear did not carry, and we gave him a 15 and 2 per cent discount off the key dealer price, whereby he was getting only 2 per cent from Richfield, which was the tire being handled by Richfield. And for a while he did not handle them because he was trying to keep out of hot water, and finally he said he was in there to make a living for himself and he was going to take care of himself and nobody else, and he was going to handle them, but he had to keep them at his home or in his car and then when he got a sale for them, he would bring them down there, the size he wanted, he would bring it from home and fill the order the next day.

Q. Did you notice whether he displayed a Quaker State sign at any time?

A. No, I don't believe he did. If I remember correctly he had had a Pennzoil sign up and Richfield had made so much trouble so——

[fol. 2605] Mr. Paradise: Now, wait a minute.

Mr. Somerville: Wait a minute, now.

Q. You did observe a Pennzoil sign?

A. Yes, I did at one time.

Q. But not all during the period you were contacting him?

A. No.

Q. Did you ever have any discussions with him as to that Pennzoil sign?

Mr. Paradise: Now, that I submit is hearsay three steps farther removed. This is not even this man's product.

The Witness: It will have a bearing, I think, sir.

The Court: Wait a minute. He makes a statement about other products. It is just as effective as to some other products. Go ahead.

A. He carried the Pennzoil sign and they made him take it down. And previous to that I had asked him if he would put our Quaker State sign up, because we figured that with the Quaker State sign up it would bring trade into his station, tourist trade. And he said, "No," he was having trouble over the Pennzoil sign and he would not go for the Quaker State sign because it would still cause more trouble than what he was having.

The Court: All right.

Mr. Somerville: You may have the witness.

[fol. 2606] Mr. Paradise: No questions.

The Court: All right, step down.

Mr. Paradise: We have reserved a motion to strike this gentleman's testimony, as I understood it, your Honor.

The Court: Yes.

Mr. Somerville: Call as the Government's next witness Mr. B. E. Turner.

Bernard E. Turner, called as a witness by the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: Bernard E. Turner.

Direct examination.

By Mr. Somerville:

Q. Where do you reside, Mr. Turner?

A. Portland, Oregon.

Q. With what company are you presently employed?
A. Christensen Oil.
Q. The same company——
A. The same as Mr. Cleveland.
Q. The same company as Mr. Cleveland testified to. How long have you been employed with Christensen Oil Co.?
A. About five and one-half years.
Q. In what capacities?
A. Well, I have been a salesman for them now about four
[fol. 2607] years.
Q. What particular sales area have you been assigned to?
A. I have the northeast district of the City of Portland.
Q. Do you recall a service station operated by Mr. Ronald Bowe and Harry Daugherty at 8110 North Lombard Street in Portland?
A. I do.
Q. Have you called on that station?
A. I have, sir.

Mr. Somerville: May it be stipulated, counsel, that this is an L-O station, and may the record show that Ronald D. Bowe has testified earlier in this case?
Mr. DeMartini: So stipulated.

By Mr. Somerville:

Q. About when did you start calling on this station?
A. Oh, I would imagine it was in the latter part of '48.
Q. At that time to whom did you talk?
A. I talked to Mr. Daugherty.
Q. Did you discuss your products?
A. I did.
Q. Was anything said about the ability of Mr. Daugherty to handle your products?
[fol. 2608] A. Not until he bought.
Q. What did he buy?
A. He bought a couple of cases of Quaker State which he put under the counter.
Q. Subsequently did you have any discussions with anyone concerning his purchasing your products?
A. Other than I asked him about other products which we handle and he said he couldn't handle them. He took

the oil, the Quaker State oil, out of the cases and put them in Richfield cases and put them under the counter.

Q. Did you subsequently make any sales attempts at this station?

A. I sold him just at that time, during the period of time we had Quaker State. I never sold the station again until November of '50, when I did sell him five cases of Peak permanent anti-freeze. Apparently he couldn't get it through his supplier.

Q. Did he tell you that?

A. No, he didn't tell me that, but I would assume that because he was looking for permanent anti-freeze.

Q. Did you ever have any conversations at the station with any Richfield representative concerning this?

A. I did.

Q. Will you describe the circumstances? First of all, when did this occur?

[fol. 2609] A. This happened about, I would say, one year ago. I came into the station not knowing Mr. Bowe, and Mr. Daugherty wasn't there and they had—their supervisor was working the station. It seems, as I recall, one of them was sick and he had taken the place. And I tried to sell him some Quaker State and he told me this representative —I am sorry about the name. He was formerly with Standard Oil. He is not in the same territory now. He has been transferred to another territory, as I understand, but still with them.

Q. The Standard Oil did you say?

A. He had worked for Standard Oil prior to coming to Richfield. And he told me that the company didn't want any of their major stations, their new ones that they were building, didn't want them to handle any outside products. They didn't approve of it. He said he didn't mind so much if I was in some of the small units at the old-time stations. And he introduced himself and told me that he was a representative for the Richfield Oil Company.

Q. Have you generally been successful in stocking your items in that station?

A. In that particular station?

Q. Yes.

A. No, sir. After we quit handling Quaker State I never sold a thing until the present time, when I sold him

[fol. 2610] winter, when I sold him that anti-freeze which was in a little shortage.

Q. Do you recall a service station in Portland operated by Verlin Sheldon at Vancouver and Lombard?

A. I knew him before that. He had a station at 7510 North Lombard. I contacted him in '48. That was a small unit.

Q. Did you make any sales to him at that time?

A. I did, Quaker State.

Q. Did he display that Quaker State?

A. He did not. He kept it behind the door.

Mr. Somerville: It may be stipulated that this station was a leased out station.

A. He did not. He kept it behind the door and under a counter, under a shelf there, rather.

Q. Did you have any discussions with him at that time concerning why he would not display it?

A. He said he couldn't because on the tire deal, when I sold him tires, I brought them out in my own car and took them out and put them in his Nash automobile. He said, "If they are in my car, there will be no questions asked about it."

Q. Did you subsequently attempt to make sales to Mr. Sheldon at Vancouver Avenue and Lombard?

A. I did. Right when he first took over that station we still handled Quaker State and I sold him some at the time. [fol. 2611] When we quit handling Quaker State I never made any more sales. I made attempts to sell him tires after that but I never could make it.

Q. Did you have any conversations with him at this time, at this particular L-O station at Vancouver and Lombard, concerning buying your products?

A. Yes. He told me it was a new station, one of the biggest in the city, one of their best ones, and he couldn't have anything in sight that did not belong to Richfield. However, I did sell him a couple of cases of Quaker State which he kept in the back room there just off the lube room.

Q. Did he ever give you any instructions on the manner in which deliveries should be made?

A. Yes, sir. He bought two-gallon cans——

Q. When did such instructions occur?

A. Right after he had taken over this new station, I would say within about three or four months, which was along in January in '49.

Q. Were there any other parties present?

A. No, sir, there never has been.

Q. What did he say then?

A. He bought twenty cases at two different intervals, as I recall, after he took that station over. I would say it was along in June. Aero Eastern motor oil, and I delivered it to his home. Now, what he did with it I don't know.

[fol. 2612] Q. Did he ever purchase any of your Miller tires?

A. Not at Lombard and Vancouver. He did at 7510 North Lombard.

Q. That was the prior station?

A. That is right.

Q. Did you make delivery of those tires to his station?

A. I did.

Q. Did he ever instruct you concerning where to deliver the tires?

A. He told me to bring them to the station and I put them in the back of his car.

Q. Upon his instructions?

A. That is right.

Q. Did that occur more than once?

A. I believe I made two deliveries to him and that is all. I would say that I sold him in the full length of time that he bought tires from us, I would say probably tires would be about the limit, eight or ten.

Q. At that time did he tell you why he was putting them in the trunk of the car?

A. Yes. He didn't want Richfield Oil to find them.

Mr. Somerville: May the record show that Mr. Sheldon testified earlier in this trial?

Q. I call your attention to the service station operated by Gus Radke at 1205 Northeast Sandy Boulevard in Port-[fol. 2613] land, Oregon and ask you if you have ever called at that station?

A. I have.

Mr. Somerville: May the record show that Mr. Radke testified earlier in the trial and that this was a leased out station that Mr. Radke had, form 542 lease?

Mr. Paradise: So stipulated.

The Court: All right.

By Mr. Somerville:

Q. About when did you first call on Mr. Radke?

A. Along in '48 or '49, until the station was tore down and this new unit put up.

Q. Did you make some sales to him?

A. I did.

Q. Did you make many sales to him?

A. I sold him Quaker State until he left that station. As to how often he needed it, we always kept a supply there for him.

Q. Did he display that oil?

A. He did not. It was in the back room off the lube room.

Q. Did you have any discussions concerning that?

A. Yes. I sold him some batteries.

Q. About when would that be, now?

A. That was along in, oh, the latter part of 1948 or '49.

[fol. 2614] Q. What did he say?

A. He bought value, strictly on price, and he kept those in a room right off the office. He said he couldn't display any of the merchandise because Richfield Oil Company had kind of an office over there, I do believe. That is where a lot of the salesmen met every morning it appeared to me.

[fol. 2615] Q. Now, I call your attention to a service station at 3817 Fourth Plains Road, in Vancouver, Washington, and ask you if you ever called on that service station.

A. That station belonged to Mr. and Mrs. Johnston. Mr. Johnston——

Mr. Paradise: Just a moment.

By Mr. Somerville:

Q. Now, about when did you call on that station?

A. That was in '48 and '49.

Mr. Somerville: The government calls for the documents concerning 3817 Fourth Plains Road, Vancouver, Washington.

Mr. Paradise: We produce in response to the call—where is that in the subpoena, Mr. Somerville?

Mr. Somerville: It would be item 156 of part 1 of the second subpoena.

Mr. Paradise: There were a series of contracts entered into between Richfield and Mr. Howard P. Smith.

I have the original 3-C service station lease, dated April 23, 1946, between Howard P. Smith and Mary Smith, his wife, as lessors, and Richfield, as lessee, covering the property in the city of Vancouver, Washington, there described, which I hand you.

I also have unexecuted copies, I regret—I mean I regret they are unexecuted—of a 3-C operator's lease, dated April 23, 1951, between Richfield, as lessor, and Howard Smith, [fol. 2616] as lessee, for the term commencing May 1, 1951, and continuing to April 29, 1956, paragraph 11 of which states that it is subject to the basic lease, which I have just handed to you, and an unexecuted copy of a 3-C operator's sales contract on Form 783.

I find that I was handing you the wrong contract. May I restate that.

I hand you now 3-C operator's lease on Form 668, print date 11-45, dated April 23, 1946, between Richfield, as lessor, and Howard Smith, as lessee, covering the same property in Vancouver, Washington, commencing May 1, 1945, and continuing until April 29, 1941, and the paragraph 11 of which states it is subject to a basic lease between Howard Smith and wife, as lessors, and Richfield, as lessee, dated April 23, 1948. I believe this instrument which I hand you is dated the same as the original lease on Form 362, that is to say, April 23, 1946.

I also hand you an unexecuted copy of a sales contract, dated April 23, 1946, on Form 783, print date 1-46, between Richfield, as seller, and Howard Smith, as buyer.

I also hand you two instruments, executed between Richfield and Howard P. Smith, both dated October 21, 1948. These are the original instruments, and they are both executed. The first is on a printed form entitled "3-C Operator's Lease," Form 668, print date 9-48, between Richfield,

as lessor, and Howard Smith, as lessee, dated October 21, [fol. 2617] 1948, and for the term commencing November 1, 1948 to April 29, 1951. It covers the same property in Vancouver, Washington, and in paragraph 11 recites it is subject to the original basic lease, dated April 23, 1946, which I have heretofore handed you.

I also hand you an instrument on a printed form called "3-C Operator's Sales Contract" Form 783, with a print date of 8-48, dated October 21, 1948, between Richfield, as seller, and Howard Smith, as buyer, for the period commencing November 1, 1948, and continuing to April 29, 1951.

Mr. Somerville: May it be stipulated that there was in fact an executed agreement as to all of these?

Mr. Paradise: Do you mean that the executed agreements, of which two of those are unexecuted copies, conform to the unexecuted copies, and were executed?

Mr. Somerville: Yes.

Mr. Paradise: So stipulated.

The Court: All right.

Mr. Somerville: Will you mark these, please?

The Clerk: Government's Exhibits 24, 24-A, 24-B, 24-C and 24-D, marked for identification.

(The documents referred to were marked Plaintiff's Exhibits 24, 24-A, 24-B, 24-C and 24-D, for identification.)

[fol. 2618] Mr. Somerville: We offer those documents in evidence, your Honor.

The Clerk: Are these admitted, your Honor?

The Court: Yes, they may be received.

The Clerk: In evidence.

(The documents, heretofore marked Plaintiff's Exhibits 24, 24-A, 24-B, 24-C and 24-D, for identification, were received in evidence.)

By Mr. Somerville:

Q. Mr. Turner, about when did you call on this station?

A. Oh, I would say it was around '48 and '49.

Q. Did you make a number of calls?

A. Yes, sir, while I had that territory.

Q. Did you observe who was operating that station?

A. Yes.

Q. Who was it?

A. Mr. and Mrs. Johnston. However, Mr. Johnston——

Mr. Paradise: Wait a moment, please. Just answer the question.

The Witness: Yes. Mr. and Mrs. Johnston.

By Mr. Somerville:

Q. Those were the people that were actually running the business?

A. That's right.

Q. And did they purchase any products from you?

A. They did.

[fol. 2619] Q. They did during this period that you called on them?

A. Yes.

Q. Did you have any discussions with either Mr. or Mrs. Johnston concerning the ability to purchase your products?

A. Mrs. Johnston——

Mr. Paradise: I object to that on the ground of lack of foundation, immateriality, and hearsay.

The Court: Overruled.

Mr. Paradise: May I be heard on this point, your Honor?

The Court: Yes.

Mr. Paradise: This is different from the Ogburn station and it is also different from the testimony concerning Mr. Ellis, where this objection was partially argued in the record before. That occurred on pages 647 and 654 of the record, and the court will recall that permission was given to further argue that matter.

I think this testimony is of an entirely different character, and the objection to this is of a different nature. Mr. Ogburn, your Honor will recall, testified he was installed at the station by Mr. Mathis, but in the presence of a Richfield commission agent. I think his name was Schwab.

Now, there is no testimony of the relationship between this Mr. and Mrs. Johnston to Richfield; there is a complete lack of foundation. For all that appears to the court, [fol. 2620] Mr. and Mrs. Johnston may have some arrangement with Mr. Smith, the owner and the party to these

3-C contracts, to which Richfield was not a party, and at which no Richfield representative ever appeared.

The Court: That can be brought out on cross examination. Overruled.

The Witness: Well, all I know was what——

By Mr. Somerville:

Q. First of all, would you please help us on this: Fix an approximate time when the conversation occurred.

A. Well, it seems to me it was along in the early part of '49, when they left that station, and Mrs. Johnston told me that they were getting kicked out of that station at the time. Now, I——

Q. Did she say why?

Mr. Paradise: Have you fixed the time of this?

By Mr. Somerville:

Q. What was the approximate time? I didn't quite follow you on that.

A. It seemed to me it was along in the spring of '49. I am a little hazy on the time.

Q. Were there any other parties present?

A. No, they were not.

Q. Other than you and Mrs. Johnston?

A. Mrs. Johnston.

[fol. 2621] Q. Was the occasion of your call a service call?

A. Oh, yes, definitely.

Q. Were you talking about her purchasing your products?

A. Well, that would be why I was there.

Q. Tell us exactly now what she said.

A. She told me that she was in a heck of a fix with Richfield Oil. Now, it could have been through Mr. Smith, too. That is true, he is a contractor next door who owned the property.

The Court: Don't let the lawyers' talk educate you. Just go on and tell the conversation.

A. Well, this——

By Mr. Somerville:

Q. Did she say anything concerning her ability to buy products from you, specifically?

A. No. She said that she would continue to buy.

Q. Did she say anything about whether——

The Court: Well, that is leading, it is terribly leading, Mr. Somerville.

Mr. Somerville: Oh, I am sorry.

The Court: This is important evidence.

By Mr. Somerville:

Q. Was that the total conversation, sir?

A. Sir?

Q. Was that the total conversation?

The Court: You started to tell us something when counsel [fol. 2622] interrupted you. You said she was to be kicked out. Did you finish the conversation?

The Witness: Yes, that is what she told me.

The Court: Did she give you any reasons why she was being kicked out? Did she tell you why?

The Witness: She said she was in the dog house with the Richfield Oil Company supervisor.

The Court: For what?

The Witness: I don't know. She didn't say directly.

By Mr. Somerville:

Q. Did she have competitive items in the station?

Mr. Paradise: I object to that for lack of foundation.

The Court: That is leading. I won't allow that to be pulled out of this man. He is intelligent enough to tell us what took place without guessing. If he has to guess, why, our guess is just as good as his.

Mr. Somerville: Yes, your Honor.

The Court: All right.

Mr. Somerville: I just wanted to be sure we had the full conversation.

Q. Passing now to a station operated by——

The Court: How many more have you got? I thought this witness was going to be short. It is 12:30 now.

Mr. Somerville: This man has a great number of stations.

The Court: All right, we will stop right now. No use [fol. 2623] to go through the entire noon hour, gentlemen. You have made up for time.

(Whereupon, a recess was taken until 2:00 p.m. of the same day, Wednesday, May 23, 1951.)

[fol. 2624] Los Angeles, California, Wednesday, May 23, 1951, 2:00 p.m.

The Court: All right, gentlemen, let us go on.

BERNARD E. TURNER (Recalled).

Direct examination (continued).

By Mr. Somerville:

Q. Mr. Turner, I believe we were talking about a service station operated by Guy Lenton at 4871 North Lombard. Did you make calls on Mr. Lenton?

Mr. DeMartini: Is this an L-O?

Mr. Somerville: It may be stipulated that it was. May the record show that this is the same Mr. Lenton who testified earlier in the trial.

A. Yes, I made calls on Mr. Lenton.

Q. Could you tell us about when you made your first call on that station?

A. I believe it was in '49 that he took that station over. It was a brand-new unit. He opened it up. It was along about the late spring, I believe, that that station was opened up.

Q. Did you make any sales of your products to him?

A. I did.

Q. What were they?

A. Just Quaker State.

Q. Did you have any instructions from Mr. Lenton con- [fol. 2625] cerning the deliveries?

A. Yes. Mr. Lenton told me to bring it out——

Q. At sometime in your initial sales attempt would that be?

A. Well, the first sale I made, he called me at the office and asked me to bring out some Quaker State.

Q. And then did he subsequently have any conversation concerning how deliveries should be made?

A. Yes. He told me to bring——

Q. When did that occur?

A. At the same time he talked over the phone, to bring it out in my own car, that he didn't want the truck out there, he didn't want the Richfield Oil Company to see our trucks on his premises. So I delivered it in my own car.

Q. And did you make any subsequent sales to this man?

A. Just Quaker State. I never sold him anything else.

Q. Did you always make deliveries in the same manner?

A. For the short time he had the station I made all the deliveries, that is right.

Q. Did he display these products, do you know?

A. No, sir.

Q. Did you have any discussions with him concerning display of them?

A. No.

Q. I call your attention now to a service station operated [fol. 2626] by Walter Parcel at 4311 North Vancouver Avenue in Portland, Oregon. Are you familiar with this operator?

A. I am.

Mr. Somerville: May it be stipulated, counsel, that this was an L-O unit?

Mr. DeMartini: So stipulated.

By Mr. Somerville:

Q. When did you call on this station, during what period?

A. Oh, during the year of '49, not very often, one or two times.

Q. Did you ever sell him any oil, any bulk oil?

A. Not until April of this year, 1951.

Q. Would you describe the circumstances under which that sale was made? Did you have any conversations with him concerning an order?

A. Yes. I took the order myself and he asked me not——

Q. When did this occur?

A. I would say about April 9th of this year, 1951.

Q. And where were you talking to him, in the station?

A. On the station property. He told me not to deliver on Tuesday, that that was the gas day. He didn't want the truck in there during the same time that the Richfield truck would be there. He told me to deliver it on Wednesday, to bring the truck up and have the barrel dumped over the fence on the other property. There is a hedge there. It [fol. 2627] was over the back of this hedge.

Q. Now, I call your attention to a service station operated by Fred Erz at 630 Northeast Union in Portland. Are you familiar with this particular dealer of this station?

A. I have called on the gentleman.

Mr. Somerville: May it be stipulated, counsel, that this is an L-O unit also?

Mr. DeMartini: Yes, sir.

By Mr. Somerville:

Q. You did call on that station?

A. Yes, sir.

Q. And about when did you make such calls?

A. Oh, that was along in early '49.

Q. And did Mr. Erz buy anything?

A. No, sir.

Q. Did you have any discussions concerning whether he could or could not buy?

A. He told me that he was a Richfield unit and could not.

Q. First of all, did you have such discussions?

A. Well, not necessarily on that line.

Q. Did you have some discussions concerning handling your products?

A. He said he couldn't handle my products.

Q. When did this occur, now?

A. Oh, that was along in, I would say, January or [fol. 2628] February of '49, along in that time.

Q. Had you ever made any sales of your products to this man?

A. I never did. I never called on him again.

[fol. 2629] Q. I call your attention to a service station operated by Robert C. Cooper, at 5040 Southeast Powell in

Portland, Oregon. Have you ever made a call upon this particular operator at this station?

A. Yes, sir.

Mr. Somerville: May it be stipulated, counsel, that this is an L-O unit?

Mr. DeMartini: Yes, sir.

By Mr. Somerville:

Q. When did you make your first call on this station, Mr. Turner?

A. Oh, along in January of '49.

Q. At that time did you endeavor to sell him your products?

A. I did.

Q. Did he buy your products?

A. No.

Q. Did he say why he could not buy your product?

A. He said he was a Richfield unit, and he was using Richfield products, and that was all he wanted to use.

Q. That was all he wanted to use. I call your attention to a service station operated by Ralph Eadus, at 528 Southeast Union, in Portland. Are you also familiar with this particular operator and station?

A. Yes, sir.

Mr. Somerville: May it be stipulated this is an L-O [fol. 2630] unit?

Mr. DeMartini: So stipulated.

By Mr. Somerville:

Q. Did you ever call at his station with respect to selling your products?

A. Yes, sir.

Q. About when?

A. Oh, several times in '49 and '50.

Q. Were you able to sell him any of your products?

A. No, sir.

Q. Did you have any discussions at that time concerning whether he could or could not buy your products?

A. Yes, sir.

Q. About when did such discussions occur?

A. Along in '49, the early part.

Q. The early part of '49. At the station?

A. Yes, sir.

Q. What was said by you and by Mr. Eadus?

A. He said that he liked the product and did use it, but he didn't keep it in stock in his station, because Art Lutz, the Shell operator across the street, had it in stock at all times, and he could borrow it from him.

Q. Did you ever make any sales subsequently to this man?

A. Not to him, personally, no, sir.

Q. Did you ever make any sales to any of his help, if [fol. 2631] he had any, at his station?

A. No, sir.

Q. I call your attention now to a service station operated by a Mr. Judd at 82nd and Division Southeast, also in Portland. Do you know this particular man and station?

A. Yes.

Mr. Somerville: May it be stipulated this was an L-O unit?

Mr. DeMartini: And that Mr. Judd was an operator under a form 542 lease?

Mr. Somerville: Yes, sir.

Mr. DeMartini: Thank you.

By Mr. Somerville:

Q. Will you tell the court about when you first called on this station?

A. Oh, that was in '49. It was a Hancock station, and Richfield took it over, and he was the new operator in it at that time.

Q. Did you make your usual sales approach?

A. Yes, sir.

Q. With what result?

A. No result. He didn't buy. He was a new unit and——

Q. Did he discuss why?

A. Well, he said—no, other than that he was a new unit, and he was handling Richfield products, and told me to call back later, which I never did.

[fol. 2632] Q. No further discussion?

A. No, no further discussion.

Q. I call your attention to a service station operated by John P. Locke at 4529 North Interstate, also in Portland. Do you know Mr. Locke, and have you called at his station?

A. Yes, sir.

Mr. Somerville: May it be stipulated that Mr. Locke is a lessee under a Form 542 lease?

Mr. DeMartini: Yes.

By Mr. Somerville:

Q. When did you first call at his station, Mr. Turner?

A. That was—oh, I called on him in '48 and '49.

Q. Were you successful in selling some of your products?

A. No, sir.

Q. At any time did you have any discussion concerning his ability or lack of ability to buy your products?

A. Oh, I have talked to him several times. He was a friend of the man that owns the company I work for.

Q. You talked to him several times. Can you fix some particular time?

A. Oh, it was along, say, in the early part of '49.

Q. What did he say concerning your products?

A. Nothing, or he told me he couldn't see why he should jeopardize himself, why he should handle our products on the outside.

[fol. 2633] Q. Now, I call your attention to a service station operator by the name of Herman H. Eppard, at 6005 North Albina, in Portland. Have you ever called on Mr. Eppard?

A. Yes, sir.

Mr. Somerville: It may be stipulated, counsel, that Mr. Eppard was the lessee of this station under a Form 542 lease during this period.

Mr. DeMartini: Thank you.

By Mr. Somerville:

Q. Has Mr. Eppard ever bought any of your products?

A. Yes, sir.

Q. Has he ever bought any of your oil?

A. Yes, sir.

Q. Does he display this oil?

A. No, sir.

Q. Where does he keep the oil that he has purchased, ordinarily?

A. He has got a locker in the back room where he carries the oil.

Q. Have you ever had any discussion with him concerning the display of your oil?

A. Yes, sir.

Q. When did that occur?

A. Oh, very steadily from 1948 to 1951.

Q. They were all of the same character?

[fol. 2634] A. Yes.

Q. And what did he tell you?

A. He told me that he couldn't keep it in sight, he wasn't supposed to handle it.

Q. Have you ever sold him any batteries?

A. Yes, sir.

Q. Did he display the batteries?

A. Not up until—he never displayed them at all until March of this year, 1951.

Q. Did you ever have any discussion with him concerning his display of those items?

A. Yes, sir.

Q. And when?

A. All along for the last two years or so.

Q. What did he say concerning the batteries?

A. That he had a consigned Goodyear battery through the TBA man, which was Radke, Ed Radke, and he carried our batteries on a shelf back of some cases of Richfield oil, and in March, I believe it was, Radke took the stand and the batteries back, without saying a word to the gentleman. So, in turn, I put a stand and the batteries in there.

Q. The batteries have been on display, then?

A. They are on display now, yes, sir.

Q. I call your attention to a service station operator by the name of Roy A. Winquist, at 6141 Northeast Sandy [fol. 2635] Boulevard, in Portland. Have you ever called on Mr. Winquist?

A. Yes, sir.

Mr. Somerville: May it be stipulated that this is an L-O unit?

Mr. DeMartini: Thank you.

By Mr. Somerville:

Q. Do you recall when you first called on Mr. Winquist?

A. That was about the first part of January, in 1949. He isn't in that station any more, however.

Q. Were you able to make any sales to Mr. Winquist?

A. No, sir.

Q. Did you have any discussions with him concerning his ability to purchase?

A. He was Richfield Oil, and was going to stay that way.

Q. Please, did you have any discussion?

A. Yes. He said—he told me he was using Richfield.

Q. When was that? At the time of your first call?

A. Along in January.

Q. What did he say?

A. He said he was using Richfield products, and he was going to continue to.

Q. Did he say anything further concerning his ability to handle it?

[fol. 2636] A. He may have at that time, I believe. I have forgotten about it.

Q. Did you ever call on a service station operated by Joseph Sunseri?

A. Yes, sir.

Q. At 3138 East Powell in Portland?

A. Yes, sir.

Mr. Somerville: May it be stipulated that Mr. Sunseri was an L-O operator under a Form 542 lease?

Mr. DeMartini: So stipulated.

By Mr. Somerville:

Q. When did you make a call on this station,—the initial call?

A. In January or February, '49, it was. I believe it was right in there.

Q. Did he buy any of your products?

A. No, sir.

Q. Did he indicate any interest in your products?

A. Yes, sir, at a later date.

Q. At a later date. Concerning this particular time, did you have any conversation with him concerning whether he could handle your products?

A. Yes, sir.

Q. Would you tell the court exactly what was said in those conversations?

A. He told me that at the present time he couldn't handle [fol. 2637] anything, any outside products, because the station was formerly owned by Archer, and we had a sign on display there of Quaker State. When Richfield had taken over the station and repainted it, he, in turn, leased it, and they had taken the sign and threw it behind the building. I found it there myself. And he said it was taken back there, he didn't say who had done it, that he didn't do it, but he said at a later date he would like to buy Quaker State, but he didn't.

Q. You didn't call on him again?

A. Yes, I did, once or twice, but he was still in a position where he wouldn't buy it.

Mr. Somerville: You may have the witness.

Mr. DeMartini: No questions.

The Court: All right. Step down.

(Witness excused.)

The Court: Call your next witness.

Mr. Somerville: The government calls Mr. Sheldon.

Norman Sheldon, called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: Norman Sheldon, S-h-e-l-d-o-n.

The Clerk: Norman Sheldon. Thank you.

[fol. 2638] Direct examination.

By Mr. Somerville:

Q. Mr. Sheldon, where do you reside?

A. In Arcadia.

Q. California?

A. That's right.

[fol. 2639] Q. What is your present business or occupation?

A. I am handling sales promotion work with the Pennzoil Company in the Los Angeles area.

Q. How long have you been with the Pennzoil Company?

A. About 11 years, with the exception of between March 1949 and April 1950.

Q. Were you ever with the Pennzoil Company in Seattle?

A. Yes.

Q. About when would that be?

A. I started to work in Seattle on about the 28th or 29th day of December 1941 and I was there until November 1946.

Q. What was your capacity during that period?

A. During the first part, the first four years or, that is, until June of 1946 I was a salesman and in June 1946 was made branch manager in Seattle.

Q. Did you subsequently remain with the company after leaving Seattle?

A. Yes. I was transferred to Portland as branch manager down there.

Q. Are you familiar, Mr. Sheldon, with the sources from which Pennzoil products are obtained?

A. Yes.

Q. And those products are lubricating oils and greases, are they?

[fol. 2640] A. That is true.

Q. With respect to the Seattle area how do you receive your shipments of Pennzoil products?

A. The bulk oils are received by deep tanker. They start shipment in Oil City, Pennsylvania, and are brought around by deep tanker. During the war we brought them by tank car from Oil City, Pennsylvania. Our lubricating greases are brought directly from our plant which is in

Vernon in California. This is our grease plant here in California.

Q. What determines the amount of oil that you have on hand at any particular time?

A. We maintain in the Seattle area there a 90-day supply of lubricating oils and in our greases, probably a six months' supply.

Q. What would be the areas supplied by you out of Seattle?

A. Out of Seattle we cover as far north as the Canadian border and as far east as the mountains, and as far south as Kelso.

Q. By the mountains, which mountains do you refer to?

A. I beg your pardon. I believe they call them the Olympic Mountains—or the Cascade Mountains. I am sorry.

Q. Let us go down the coast now to Portland. Would you describe to the court how shipments of Pennzoil products are received at Portland?

[fol. 2641] A. They are received in the same manner, by deep tanker, and our lubricating greases, etc., are from Los Angeles.

Q. What area does the Portland branch of the company supply?

A. We supply all of Oregon, all of the eastern section of Washington, part of northern Idaho, and some counties in northern California. We also make branch shipments out of there to Montana to some of our distributors over in Billings, over in that section.

Q. Would the amount of these products you have on hand at Portland be the same as in Seattle?

A. No, they are quite a bit larger. They would possibly be somewhere in the neighborhood of 10 times as large as those maintained at Seattle.

Q. How frequently do you receive shipments there?

A. Well, shipments of lubricating oils are coming up in the neighborhood of once every month by deep tanker. Our greases were being received possibly every week, depending on the season. In the summertime or in the spring, why, there is more sold than in the winter.

Q. How frequently do you ship from Portland to these areas in Oregon, Washington and Idaho?

A. There are shipments going out of there practically every day of canned oils or greases or some of our products [fol. 2642] going out practically every day.

Q. In connection with your duties in Seattle did you ever make any personal calls on service station outlets?

A. Yes.

Q. Calling your attention to a service station operated by Kenneth Kohl at 1046 First Avenue South in Seattle, do you know Mr. Kohl?

A. Yes, very well.

Q. You have called at his station?

A. Yes.

Q. Do you know whether or not Mr. Kohl purchased any of your lubricating oils and greases?

A. Yes, Mr. Kohl did. He purchased a very large quantity of our lubricating oils and greases, even back prior to his station at 1046 First South.

Q. During what period at this particular station were you making sales to Mr. Kohl?

A. The one at 1046 First South?

Q. Yes.

A. During the years when it first started, when it first opened, which was approximately 1942—I believe it was August or September of '42 when that was opened—and on through until about 1944 we were somewhat restricted during the time that we were selling him. We were restricted.

Q. Were you selling considerable quantities during the [fol. 2643] period from 1942 to 1944?

A. Yes, we were.

Q. You considered it a good account?

A. A very good account.

Q. And what happened in 1944 with respect to the amount of products which he purchased?

Mr. Paradise: (Inaudible to reporter)

The Reporter: I can't hear you, Mr. Paradise.

Mr. Paradise: I asked Mr. Somerville if he wanted to indicate the operation of this station before he went further with his examination of this witness.

Mr. Somerville: It may be stipulated that Kenneth Kohl entered into a 542 form lease with the Richfield Oil Corporation dated August 3, 1942.

Mr. DeMartini: So stipulated.

By Mr. Somerville:

Q. In 1944 something happened there with respect to the amount of sales you were making?

A. That is true. In 1944—I don't recall the month exactly—I was called in by Gib Kohl who is Mr. Kenneth Kohl's brother, and he said they were going to be unable to handle——

Q. Called in where?

A. Called in to 1046 First Avenue South, the station. I received a telephone call to come down to see them.

Q. Was this brother of Mr. Kohl's working at the [fol. 2644] station?

A. Yes, that is true. Mr. Gib Kohl suggested that I see Kenny Kohl as soon as he returned from a trip, that he wanted to tell me something regarding the products that were now being handled in his station, and until that time they could not buy any more Pennzoil oils. So as soon as Mr. Kohl returned—Kenneth Kohl I am speaking of—I talked to Kenneth Kohl and he told me in his own words—if I may quote, your Honor?—"Richfield are giving me so much hell I am going to have to stop handling Pennzoil entirely, at least for the time being." So we were forced for some time to deliver just a few cans of oil when he had demand for it, which he hid in Richfield cases. And our highboys that we had loaned Mr. Kohl were put in the back wash racks which were out behind the station and were painted Richfield colors, and Richfield oil put in the highboys. We left them there rather than to pull them out in the hopes some day we could get back in, which eventually we did.

Q. You did while you were up there sell him some more?

A. We sold him some more oil, Mr. Somerville. However, it was kept in the back room and was put in his new garage building which he built behind the service station.

Q. Was that in the same volume as it had been?

A. No. Our volume was cut down considerably.

Mr. Somerville: The Government offers as exhibit next [fol. 2645] in order two documents submitted by Richfield Oil Corporation in response to the second subpoena, II, items 61 and 62, consisting of a sheet marked "INVENTORY K. KOHL 1046 1st Ave. So.," and dated January 27, 1945, and signed by A. Ceccanti, and bearing a penciled notation addressed to "L. H. Bagby" and signed "W. E. Hamilton," dated March 20, 1945.

Mr. DeMartini: No objection.

The Clerk: Is this admitted, your Honor?

The Court: They may be received.

Mr. Somerville: You may have the witness.

The Clerk: That is Government's Exhibit 25 in evidence.

(The document referred to was marked Plaintiff's Exhibit 25 and received in evidence.)

The Court: All right, step down.

Mr. Somerville: The Government calls as its next witness Mr. Plecher.

The Court: I thought you had run out of witnesses.

Mr. Somerville: We have one more, your Honor.

The Court: One more to go, all right.

Ralph W. Plecher, called as a witness by the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: Ralph W. Plecher, P-l-e-c-h-e-r.

[fol. 2646] Direct examination.

By Mr. Somerville:

Q. Where do you reside, Mr. Plecher?

A. At 1120 South Plymouth Boulevard in Los Angeles.

Q. You are one of the local boys?

A. That is right.

Q. What is your present occupation?

A. I am a salesman for the Arthur A. Haven Co., 1600 South Figueroa.

Q. Would you tell the court the nature of the business that the Haven Company is in?

A. Well, our business has to do with practically everything but the gasoline oil end of it, such as supplies, sundries, accessories, automotive accessories that is.

Q. What automotive accessories that are ordinarily handled at service stations does your company handle?

A. Well, that includes your tires and batteries, spotlights, heaters, fog lights, automobile radios, horns, mirrors, et cetera.

Q. Do you handle tires?

A. Yes, sir.

Q. What brands of tires?

A. Well, we have handled over the period of years the Armstrong line and the U. S. line, the Goodyear line, the Norwalk line.

[fol. 2647] Q. Could you tell us what sources from which you receive your shipments of tires generally?

A. Well, the Armstrong line was the line we handled in largest volume. They have a factory in Des Moines, Iowa, New Haven, Connecticut, and in Mississippi.

Q. Do you handle batteries?

A. A locally made battery under our name, yes, sir.

Q. Do you handle oil filters?

A. Yes, the Campbell line.

Q. From where do you receive them?

A. From Providence, Rhode Island.

Q. Radiator hose?

A. Radiator hose, we handle Norwalk and the Durkee-Atwood line, both made in the East.

Q. Do you receive your shipments directly from the East?

A. That is right.

Q. Do you handle seat covers, automobile seat covers?

A. Yes, sir.

Q. Who manufactures them or where do you receive them from?

A. Well, some are made locally, but our largest supplier has been the Frazier seat cover manufacturing company in Alpena, Michigan.

Q. Do you handle the usual line of automobile chemicals, [fol. 2648] waxes, polishes, radiator flushes and the like?

A. We handle two nationally known lines exclusively, duPont and Simonize.

Q. And from where do you receive your supplies?

A. duPont items are manufactured at Wilmington, Delaware, and the Simonize line, I believe in Chicago, Illinois.

Q. Do you maintain a warehouse locally?

A. We do.

Q. What determines the amount that you have on hand, if anything?

A. We have to predicate the quantities on the anticipated volume of business that we expect to enjoy in the next 30 days to six months.

Q. What is the sales area covered by your company's operations?

A. We cover Texas, New Mexico, Arizona, Southern California and Northern California at present. We did have an outlet in Salt Lake City but we do not have that now.

Q. In your capacity as salesman do you make calls on service station outlets?

A. I do.

Q. Do you recall ever making a call on a service station operated by Paul Grim at 410 Atlantic Boulevard in Long Beach?

[fol. 2649] A. I do.

Mr. Somerville: May it be stipulated, counsel, that Mr. Grim is a lessee under Form 542 lease at that station?

Mr. DeMartini: So stipulated.

Mr. Somerville: And was during the particular time involved?

Mr. DeMartini: Yes, sir.

The Court: When did you first call on Mr. Grim?

The Witness: Well, I believe Mr. Grim came in there sometime in April or May, about 1946.

By Mr. Somerville:

Q. Were you able to make any sales?

A. Yes, I made some sales to Mr. Grim. It was grim doing it, though.

Q. What items did you sell, if you remember?

A. Well, in calling on Mr. Grim I had to go into what we call hot-rod items, such as high-compression heads and dual intake manifolds and chrome-plated carburetors, etc.

Q. Were you familiar with the type of automotive accessories approved by Richfield for Richfield stations?

A. I am.

Q. Were you able to sell any items directly competitive to some of those items?

A. No, sir, I was not.

Q. Did you have any discussions with Mr. Grim con-
[fol. 2650] cerning the fact that he was buying these other hot-rod items, as you referred to them, and not the other type of products?

A. I did.

Q. When did such discussions occur?

A. Well, that was in the first two or three months of his tenancy there, in May, June, and possibly July, 1946.

Q. Did that occur at the station?

A. Pardon me?

Q. Did your discussions with him occur at the service station?

A. At the service station. That is the only place I have ever talked to him.

Q. Were there any other parties present at the time?

A. Not that I recollect.

Q. What did he tell you?

A. Well, he said that inasmuch as he was in a supposedly 100 per cent Richfield account, that he had to buy from their TBA distributor any items that they offered for sale, regardless of the quality or price of it that I offered him for my lines.

Q. Did you discuss price of your products in comparison with the price of the approved items?

A. That is one of the most important things I did. I did discuss price.

[fol. 2651] Q. Did you have any advantage price-wise over them?

A. Occasionally, but he stayed with his instructions.

Q. I call your attention to the same station prior to the time that Mr. Grim was operating it. Did you ever call

at the station prior to that time, when another man was operating it?

A. Mr. J. W. Russell, yes.

Mr. Somerville: May it be stipulated that Mr. Russell was an L-O operator?

Mr. DeMartini: Yes, sir.

By Mr. Somerville:

Q. Did you sell any products to Mr. Russell?

A. Yes. Mr. Russell was a very aggressive merchant, a good dealer. I sold him a very nice volume of goods.

Q. Could you tell the court about when you were making the sales to Mr. Russell?

A. Well, I would say through 1942, possibly '43 and '44.

Q. Did you make any sales to him other than of the hot-rod type?

A. Yes. Mr. Russell bought things pretty well through the line that he could use in his business.

Q. Did your company business with Mr. Russell continue all through his service there at that station?

A. No, I would say from six to eight months before he [fol. 2652] sold out to Mr. Grim that he restricted his buying entirely to items that I might have other than competitive items to him with the TBA setup.

Q. Did you have any discussions with him concerning this change in his practice?

A. Yes. He introduced a new phrase to me. He called the TBA truck "the pie wagon," and said it was impossible for him to purchase further from us items that were offered for sale in the pie wagon.

[fol. 2653] Q. Did he indicate any displeasure or dissatisfaction with your items?

A. No, none whatever.

Q. Did he indicate any satisfaction with your items?

A. Well, he is still in business at another location, and I am still doing business with him.

Q. I call your attention now to a service station in Monrovia, operated by Lawrence Beischel, at 132 East Foothill Boulevard. Do you know Mr. Beischel?

A. Yes, I know Mr. Beischel.

Q. Have you called at his station?

A. Yes, sir.

Mr. Somerville: May it be stipulated that Mr. Beischel is an L-O station operator under a Form 542 lease?

Mr. DeMartini: So stipulated.

By Mr. Somerville:

Q. Did you ever do any business with Mr. Beischel at this station?

A. Yes, Mr. Beischel was a pretty good account, starting in about 1935, over the period of years.

Q. At any time did he discontinue buying from you?

A. Yes, he started to taper off about 1940 or '41, I would say, and by 1942 the volume had dropped so that I began to lose interest in making the calls.

Q. Well, as a good salesman, did you make any effort to find out why you were losing business?

[fol. 2654] A. Yes, I did.

Q. Would you tell us what transpired, if anything? First of all, when did any discussion with Mr. Beischel occur?

A. Well, I believe that started about 1940, and at that time——

Q. At the station?

A. At the station.

Q. Would you describe to the court what your approach was, and what his answer was?

A. Well, we had established quite a friendly basis in our business dealings by that time, and I could talk to him a little directly. I said I couldn't see why, as long as I had serviced him for a period of years with satisfactory merchandise, at prices which made it profitable for him, why he couldn't continue. And he told me the Richfield Oil Company had brought pressure to bear and that he would have to purchase items similar to my merchandise from the TBA distributors.

Q. And you never sold him any more?

A. Well, I stayed with the account and sold him various items, but the volume finally became so small that I dropped it.

Q. Did he ever display any of your items?

A. Oh, yes, he displayed them in the business association there. He always displayed them until later on.

[fol. 2655] Q. I am talking now about after this conversation.

A. Not very much, no. He kept them out of sight.

Q. Did he buy items like tires, and batteries, and fan belts?

A. Well, no. Sometimes we had the same lines. In that case he could hang them on the same hook, and get by with it.

Q. By "the same lines" you mean the same products?

A. That's right.

Q. Now, I call your attention, sir, to a service station operated by John Zikratch in Riverside, California, at 4th and Main Streets. Do you know Mr. Zikratch?

A. Very well.

Q. Have you called on this station?

A. For years and years.

Mr. Somerville: Will you stipulate that Mr. Zikratch is an L-O operator under a Form 542 lease?

Mr. DeMartini: So stipulated.

By Mr. Somerville:

Q. During what period did you call on this station?

A. Approximately the same period as Mr. Beischel, from about '35 on.

Q. Were you able to sell your products during the years at this station?

A. Yes, in considerable volume.

[fol. 2656] Q. Were you able to continue making sales after the war?

A. No, as—I am still calling on Mr. Zikratch, but it is personally through old friendship and not because the volume makes it worth-while.

Q. Did you ever have any discussion with him concerning why he didn't continue buying since the war?

A. Both Mr. John Zikratch and his brother, Alec, who works for him——

Q. About when did this occur?

A. Oh, from 1946, '47, '48, right on to the present time, still talking about it.

Q. Did he say pretty much the same thing all the time?

A. That's right. And he is about to go about a block or two away into a new station, so it will probably be worse.

Q. What did he say about your products?

A. That he must buy from his TBA distributor.

Q. Now, I call your attention to a service station operated by Perkins and Ederward.

A. Yes.

Q. At Rosemead and Huntington, in San Gabriel, California. Have you called on that station?

A. Yes, I was there yesterday.

Mr. Paradise: Which station?

Mr. Somerville: Perkins and Ederward, Rosemead and [fol. 2657] Huntington.

May it be stipulated that Mr. Perkins has a form 542 lease with Richfield?

Mr. DeMartini: So stipulated.

By Mr. Somerville:

Q. Were you able to sell anything at this station?

A. Well, my association with those boys started at another location in Monrovia in about 1936, and was very satisfactory from a volume standpoint until they came into this new station at the address you quoted, in about 1941.

Q. Did you ever have any discussion concerning the fact——

A. Well, they moved in there, and after they moved in there, why, they weren't so free with their business, and, pressed for an explanation, they told me that Richfield had moved them into a nice new station and they were expected to play ball pretty much with their TBA distributor.

Q. Did you make any calls on this station last year?

A. Perkins & Ederward?

Q. Yes.

A. Yes, indeed.

Q. Were you able to sell any items there?

A. Almost 100 per cent other than items that were obtainable from the TBA distributor.

Q. Did you have any discussion with Mr. Perkins con-
[fol. 2658] cerning buying other items?

A. Yes, I have.

Q. I am talking about the directly competitive items.

A. That's right. Occasionally I met the Richfield distributor there, and we are on the friendliest of terms, but we do not sell the same items, at that station.

Q. What does Mr. Perkins say about buying the other items, if anything?

A. Well, he just says, "I can't do it."

Q. Do you recall ever calling on a station operated by Robert Meeker, at 4301 East Carson, in Long Beach?

A. I do.

Q. During what period?

Mr. Somerville: It may be stipulated that Mr. Meeker has a leased out station.

Mr. Paradise: Under a Form 542?

Mr. Somerville: Yes.

Mr. DeMartini: So stipulated.

The Witness: Well, I believe I contacted Mr. Meeker at that location in about 1949. Prior to that time I had done business with him in Long Beach at another location.

By Mr. Somerville:

Q. Was that a Richfield station?

A. No, that was a General Petroleum.

Q. At this particular station were you able to sell him items that were directly competitive?

[fol. 2659] Mr. Paradise: Which particular station?

Mr. Somerville: At 4301 East Carson.

Mr. Paradise: At the Richfield-owned unit?

Mr. Somerville: Yes, sir.

The Witness: I believe that was under the name of Meeker & Maulding for a time, and then Meeker took it over by himself. They started out there to do business with me like they had at the prior location, with the other oil company, but it didn't last very long. They told me they had to stay with lines that were offered for sale by their TBA distributors, and buy from them.

By Mr. Somerville:

Q. Did you ever make any deliveries to Mr. Meeker, upon his instructions, to any place other than his station?

A. Yes. I think there was some tires and tubes one time that he had me ship to his home, and put in the garage. I think he said he could not have them on the station at all.

Q. I would like to know about when you had any discussions concerning this.

A. Well, that was probably in 1949, or early in '50.

Q. Do you remember what was said at that time?

A. Well, he just couldn't have our brand of tires on the lot, he had to stay with the competitive line.

Mr. Somerville: You may have the witness, counsel.

[fol. 2660] Cross-examination.

By Mr. Paradise:

Q. Mr. Plecher, you mentioned this Beischel station?

A. Yes.

Q. When did you stop calling on him?

A. Well, I haven't called on Lawrence for—I would say that I haven't personally seen him for two years. Occasionally a phone call comes in the store for some item, but I haven't called on him for some time.

Q. During this period that you did call on him, and during the time when he was purchasing your products, was he purchasing accessories only from you?

A. Only from me?

Q. Yes.

A. No, I wouldn't say so.

Q. He was purchasing some from other TBA distributors at the same time?

A. I believe so.

Q. I think you said when Mr. Beischel's volume got low, you stopped calling on him?

A. Yes.

Q. You do consider it good business, don't you, to stop calling on an account and stop soliciting business when the volume gets low?

A. If I can't sell him a in a sufficient volume to make [fol. 2661] it worth-while, I think I can put my time in to better advantage elsewhere.

Q. I think you said your company handles DuPont polishes exclusively?

A. DuPont and Simonize. Those are the only two.

Q. There are other lines of polishes?

A. Oh, yes.

Q. Why do you handle those lines exclusively?

A. Because we have found there are dozens and dozens of lines of polishes that come and go that have more or less of a meteoric rise and disappear, where those two nationally advertised products are constantly sold all the time.

Q. So that you are handling those exclusively at your own desire and wish?

A. That's right.

Mr. Paradise: That is all.
The Court: Any redirect?
Mr. Somerville: No, your Honor.
The Court: All right. Step down.

(Witness excused.)

The Court: Call your next witness.
Mr. Greer: Mr. Baird, please.

[fol. 2662] Chester F. Baird, called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

The Clerk: What is your name, please?
The Witness: Chester F. Baird, B-a-i-r-d.
The Clerk: Chester F. Baird, B-a-i-r-d?
The Witness: That's right.

By Mr. Greer:

Q. Where do you live, Mr. Baird?
A. 540 West Seventh Street, Reno.

Q. Reno, Nevada?

A. That's right.

Q. What business are you in?

A. Automotive Supply.

Q. What company do you work for?

A. Nevada Auto Supply Company.

Q. Speak just a little more audibly, Mr. Baird, so that opposing counsel can hear you. Did you say the Nevada Auto Supply Company?

A. That's right.

Q. How long have you been with that company?

A. Going on six years?

Q. Will you tell the court something of the products [fol. 2663] that that company handles?

A. We handle batteries, tires,——

Q. What kind of batteries do they handle?

A. Exide batteries.

Q. Where do those Exide batteries come from?

A. Out of the San Francisco warehouse.

Q. What kind of tires do you handle?

A. U. S. tires, which are shipped out of Los Angeles.

Q. What kind of fan belts?

A. Raybestos, which come from Bridgeport, Connecticut.

Q. Do you handle oil filters?

A. That's true.

Q. Where do they come from?

A. We handle both Fram and A-C. The Fram come from back East, and the A-C come from Flint, Michigan.

Q. Do those Fram filters come from Providence, Rhode Island?

A. That's right.

Q. Do you also sell any oil?

A. Yes, we do; Quaker State.

Q. And that comes from Pennsylvania?

A. That comes from Oil City, Pennsylvania.

Q. What is the geographic scope of your company's activities?

A. Well, we cover northeastern California, and northern [fol. 2664] and central Nevada.

Q. Now, in the scope of your work as a salesman for that company, do you call on service stations?

A. That's true.

Q. Do you call on any service stations which dispense Richfield gasoline?

A. Yes, I do.

Q. Directing your attention to——

Mr. Greer: I may interject here, counsel, that I am going to talk about stations operated by W. W. Torrey, Les Sawyer, Robert Marsh, and Pete Ellena. Is it stipulated that all four of those are operated under a Form 542 lease?

Mr. DeMartini: It is so stipulated.

By Mr. Greer:

Q. Now, Mr. Baird, directing your attention to the station of W. W. Torrey, have you ever called on that station?

A. I have.

Q. Would you indicate to the court what your sales experience was in calling there?

A. Well, it has been rather good. It has been an average service station so far as volume was concerned.

Q. Do you recall calling on Wayne and Mark Torrey at that station in the month of July, 1949?

A. I do.

Q. Would you tell the court what transpired on that [fol. 2665] visit?

A. Yes, that was about the time I received a letter in regard to the Chevron stations being able to purchase on an open market basis.

Q. Are you referring to the case of United States v. Standard Oil Company of California?

A. That's true.

Q. All right. Go ahead.

A. And we were discussing the proposition of having all things fair and equal on a competitive basis with Standard or Chevron stations from there on, and which would have a bearing against Richfield stations, and the rest of them combined.

Q. When you say "we" do you mean yourself and Messrs. Torrey?

A. Mr. Torrey, that's right; and in the presence of us was Mr. Hunt and a merchandiser of Richfield Oil Company.

Q. Who was Mr. Hunt?

A. Mr. Hunt was the plant manager

Q. The bulk plant manager of the Reno area?

A. Yes, of Reno.

Q. Do you recall any conversation?

A. Yes, I had the copy of the same letter mailed to all the Chervon stations at this time.

Q. The letter mailed by Standard Oil Company?

[fol. 2666] A. Yes, and the quotation of the letter, as it read.

Q. What was your purpose in taking that with you?

A. Well, to emphasize upon them the fact that the market was open on the Chevron stations, and it was no longer tied up.

Q. When you did that, did Mr. Hunt, the Richfield representative, make any statement?

A. Yes. They got quite a, oh, you might say, a "boot" out of it. They kind of laughed it off, and said, "It doesn't mean anything. It is just a matter of process, something they had to go and get done with, and it is all over with, so we will go from here."

Q. Directing your attention to the service station operated by Les Sawyer at 304 West Fourth Street, in Reno, have you called on that station?

A. I have.

Q. What was your experience there?

A. In regard to business?

Q. Yes.

A. Is has been very good.

Q. Did you ever sell him any Quaker State oil?

A. I have.

Q. Did he ever make any statement to you about his handling of that oil?

A. Yes, sir. There was one statement made, oh, in 1950 [fol. 2567] in regard to storing the oil. He was approached by the Richfield bulk plant manager about the fact of the way he stored his oil inside the service station. He stored it under the counter, along with other competitors', but being open 24 hours he left his oil outside. So they told him to move it, and we had just got through the episode of the Standard Oil Company when the letter came through,

and to antagonize this thing, he said, "I don't know what you want me to do with the oil. Would you mind to give me a written memorandum whether you want me to take it home, set it out on the streets, or what?"

Q. Did he say he got a written order?

A. No, he didn't.

Q. Did you ever sell him any oil filters?

A. Yes, I sold him Fram, and he has been buying Fram for about four years, but they have been kept under the counter.

Q. Directing your attention to the service station operated by Robert Marsh at 859 South Virginia Street, have you called on Mr. Marsh?

A. Yes.

Q. Have you sold him any Quaker State oil?

A. Yes.

Q. Where does he keep it?

A. He also kept it under the counter.

[fol. 2668] Q. Directing your attention to the service station unit operated by Pete Ellena, also at 859 South Virginia Street, did you call on him?

A. Yes, I did.

Q. About when?

A. Oh, about in '48, to the last part of '49.

Q. What was your sales experience with him?

A. At the start, very good.

Q. What did you sell him?

A. Sold him Fram filters, Quaker State Oil, and miscellaneous accessories.

Q. Was the volume of accessories you sold him large?

A. Well, to start with, but during the termination of his stay at that station, they began to diminish.

Q. Did you ever ask Mr. Ellena why your sales volume was falling off with him?

A. Yes. He stated, frankly, that what the reason for the drop-off was was the pressure put on him by Richfield, on the fact he wasn't buying enough accessories through his TBA man.

Q. Did Mr. Ellena subsequently cease to be the lessee of that station?

A. He did.

Mr. Greer: May the record show that Mr. Ellena has previously testified in this case.

[fol. 2669] By Mr. Greer:

Q. Now, coming back to the service station operated by Wayne and Mark Torrey, did you call on them about three weeks ago?

A. I did.

Q. What was the purpose of your call?

A. Well, it was just a general sales call, but mainly to sell him some Quaker State.

Q. And what happened?

A. Seemed to be that they had a meeting with the Richfied Oil Company.

Q. Did you have any discussion with Wayne and Mark Torrey themselves?

A. With both Wayne and Mark.

Q. All right. What was said?

A. It was in relationship to the meeting that they had just had with the bulk plant manager.

Q. How did they happen to mention the matter?

A. Because I tried to get a Quaker State order out of them.

Q. All right. What did they say?

A. That they were not supposed to handle Quaker State, Quaker State was not supposed to be on the premises or dispensed. Up to this point you might understand it has been there hidden. Now they don't want it on the premises whatsoever.

[fol. 2670] Q. You started to mention a meeting. Did they mention a meeting to you?

A. Yes, they mentioned a meeting they had with their bulk plant representative or manager.

Q. Did they say when that meeting had been held?

A. No, I couldn't say exactly. It must have been around six weeks ago.

Q. Who called the meeting?

A. The bulk plant manager.

Q. Who attended the meeting?

A. All service station managers or operators up there.

Q. In the entire Reno area?

A. Just Reno.

Q. What instructions did you say were given at this time?

Mr. Paradise: Is this man still talking about his conversation with Mr. Torrey?

Mr. Greer: Yes.

The Court: Yes. Go ahead.

The Witness: The instructions that was given out there at that meeting was to get the off brand oils out, entirely out, nowhere on the premises would they be permitted.

By Mr. Greer:

Q. Did you make any statement concerning their purchase of Quaker State oil?

A. You mean at this particular meeting?

[fol. 2671] Q. Yes.

A. Yes.

Q. What did you tell them?

A. I told them if they ran into any difficulties or any hot water over having the oil, that I would take it off their hands.

Mr. Greer: The witness is with you.

Mr. Paradise: No questions.

The Court: All right. Step down.

(Witnessed excused.)

Mr. Dixon: The government asks that a document returned by the defendant under subpoena No. 2, paragraph No. 2, item No. 65, be marked for identification as Government's Exhibit 9-A.

The Clerk: So marked.

(The document referred to was marked Plaintiff's Exhibit 9-A, for identification.)

Mr. Dixon: The government offers Exhibit 9-A in evidence.

The Court: All right.

The Clerk: Is this admitted, your Honor?

Mr. DeMartini: It is objected to, your Honor,——

The Court: I was waiting for you.

Mr. DeMartini: —as immaterial.

The Court: I will take a look at it.

[fol. 2672] Mr. DeMartini: And on the ground that Mr. Kohl, the party referred to in this letter, was here as a witness, and he resides at Seattle, and was dismissed by the government as a witness.

Mr. Dixon: If the court please, I think this document, if read in connection with Government's Exhibit 9, the relevancy of it will be immediately apparent. The government is not interested in anything beyond the first four sentences in the document, but is offering it only for the purpose of showing the policy in operation as stated and explained in Government's Exhibit 9, and the effect of that policy on the 3-C or 337 type of contract in existence at that time.

The Court: The objection is overruled.

The Clerk: 9-A in evidence.

(The document, heretofore marked Plaintiff's Exhibit 9-A, for identification, was received in evidence.)

Mr. Paradise: I believe the point of the objection was not made fully clear. I think Mr. Dixon's statement highlights the basis of the objection. Mr. Dixon stated that the exhibit is offered particularly in the light of the first four sentences of the first paragraph, as a showing of Richfield's plan or policy.

Now, we submit that there is no foundation on this, [fol. 2673] because this is an extreme and isolated situation. It is not a part of a plan or purpose. This is one of its kind out of 360 stations. Mr. Kohl was subpoenaed by the government, and when he got here from Seattle, he was released. We have no opportunity to show that.

The Court: This is not a statement by Mr. Kohl. It is merely a recommendation of the business manager in regard to that particular account, as an admission against interest, for whatever it may state. This is not Kohl. This is signed by Wilson.

Mr. Dixon: That is a company document.

The Court: No comment.

Mr. Dixon: Sorry.

The Court: Overruled.

Mr. Dixon: In the interests of shortening the trial and

the record, your Honor, and also to make available to your Honor in one document the statistical material which the government requested of the defendant, and which has been submitted to it pursuant to the subpoena served upon it, the government has assembled in one document all of the statistical material so submitted to it by the defendant under 16 paragraphs of the subpoena, which it wishes to offer in evidence.

I, therefore, ask that the compilation as assembled, containing the material submitted to the government under the [fol. 2674] subpoena, be marked as Government's Exhibit 26, for identification.

The Clerk: So marked.

(The documents referred to were marked Plaintiff's Exhibit 26 for identification.)

[fol. 2675] The Court: The offer is directly of a compilation under the rule which arose in the Ninth Circuit, that if the original material is available or is taken from the books of the defendant, then a compilation prepared by anyone may be received either as such, or in case it involves accounts through an accountant who has gone through the original books and made the compilation.

Mr. Paradise: I understand, yes.

The Court: I am making that statement so you understand the basis of the offer.

Mr. Paradise: I understand, your Honor. That is not the basis of our objection.

Mr. Dixon: I have not offered it yet, counsel.

Mr. Paradise: I thought you had offered it.

Mr. Dixon: I just asked that it be marked for identification.

The Court: All right.

Mr. Dixon: The Government represents to the court and to counsel for the defendant that the compilations contained in this exhibit are as taken from the material or the compilations submitted to the Government by the defendant.

I must add, however, that it was the thought of counsel for the Government that this might be submitted as a stipulation. The Government compiled the material which it is now offering and which is contained in this exhibit in

[fol. 2676] its present form to defendant's counsel last Friday. It is my understanding that they did not wish to sign the compilations as prepared by counsel for the Government in the stipulated form. I do not think there is any objection to the accuracy or the correctness of any of the statements that may be contained therein.

The Court: Let us consider that an offer, and let us hear what Mr. Paradise's objection is.

Mr. Dixon: The Government offers it into evidence, then.

Mr. Paradise: If the court please, the Government on May 8th served a subpoena duces tecum on the defendant. In response to the Government's request that the compilations called for by certain items of that subpoena be made in the form of a stipulation, the defendant—I may add, at considerable time and thought—prepared certain statistical data, submitted it to the Government, and was requested to work out a form of stipulation, which was very carefully done. That particular stipulation was submitted by Mr. Dixon and originally submitted at the opening of the trial and is in the custody of the clerk.

It is quite correct, as Mr. Dixon states, that last week he suggested to the defendant that the data that had been included in the stipulation be set forth in a different stipulation and containing different explanatory notes than were [fol. 2677] contained in the defendant's response to the subpoena.

Counsel for the defendant, Mr. DeMartini and ourselves, found it inadvisable on the part of our client to sign the suggested revised stipulation. We have a stipulation with the Government and that is the one that we think should stand before this court.

I may also say that the data contained in the stipulation offered by Mr. Dixon does contain explanatory data that the defendant would not submit in its response to the subpoena.

The Court: All right.

Mr. Dixon: If the court please, as counsel has indicated and for the purposes of shortening the time of the trial, we did work out the form of stipulation that has been referred to by counsel. It was always understood at that time as far as the Government was concerned, that all or none of the

material could be offered by either party to the stipulation at the time of the trial. It was, I think, of definite help to both sides to have this material submitted before we came to the courtroom where we would have to call for a formal return of all of those accounts or all material, which would obviously have encumbered and extended the record.

There is no question here as to the contents of the stipulation. In its original form, as counsel refers to, there were matters contained therein which the Government does [fol. 2678] not offer as part of its case, in the interests of keeping the record as brief as possible. In fact there are compilations in there which your Honor has already ruled are irrelevant and immaterial, namely, any data which relates to sales made, etc., to the uncontracted stations.

The Government therefore very definitely felt that, as part of its case and for the ready access to this material by the court or anyone who might have to subsequently read the record in this case, that it would be of considerable help to have it all in one document.

Now, with reference to the statement made by counsel that we have offered or added some explanatory notes, I wish to say that the only thing which has been added to the form of stipulation that counsel has referred to that is contained in the one that the Government is now offering are such items as refer specifically to the station outlets coming within the three categories, the L-O, the 337, and the 3-C. And your Honor will note by referring to the compilations covering those stations that there is a reference to the fact that the figures given in the compilation by the defendant refer to the type of outlet represented by Government's Exhibits 1 and 1-A through so and so, and 2, when we are dealing with the L-O stations, by reference to Government's 3 and 4 when we are dealing with any compilations dealing with the 337 type of arrangement—I am wrong in that. That is 3-C and 2-B type of arrange-
[fol. 2679] ment. And then the other addition has been made to that data which refers specifically to the 337 or the painting-sales contract type of information. And the sole and only purpose of adding them has been, as I have expressed, to indicate to the court and to anyone who may read the record that that data refers to those types of contracts.

And I have asked counsel specifically as to whether or not they wish to question that fact, or as to whether they wish to amend that language or add anything to it. Government counsel is perfectly agreeable to any change in that part of it.

The Court: I think, gentlemen, that solution of this problem lies in following the rule. The rule which allows compilations to be brought in means that they are what they purport to be, and that is compilations made by a party or a witness from original documents which are before the court. Ordinarily they put a witness on the stand to testify that he has made the compilation.

We have used that rule not only in this type of case but used it in the criminal case. In fact, as I told you before, at this meeting that we had on this antitrust committee I called attention to some of the New York gentlemen to the way we were handling this and they were very much surprised. And I said, "Why, that has been the rule of our [fol. 2680] circuit for a long, long while and we have followed it."

So the basis of the rule is it is a compilation from the original documents which are before the court. I tried an income tax case some two or three months ago, and not only tables there but the press table was littered with books of account extending over a period of years, original entries, and, as I told you before, one of the witnesses brought in a sackful of some 4,000 bank deposit slips. But the Government's experts went on the stand and testified that they had examined those and they made certain particular summaries.

So I think if we follow that rule and identify the original stipulation, merely identify it in the record, then we can receive it as being the original document from which the compilation is made, and this 26 is nothing more than a compilation and you are free to dispute it either in your argument or in the presentation of your case, to object to any comment they may have made that is not necessary by way of explanation. And that solves the problem. That brings that entire thing as the source material above which this cannot rise.

Mr. Paradise: Of course, your Honor, we have no objection on the basis of the compilation. During the defend-

ant's case the defendant expects to offer various accounting compilations. However, I think the court should be aware of this: Any compilations contained in the exhibit [fol. 2681] just offered by the Government are not a summary or compilation of material contained in the stipulation. They are the identical figures, I understand from Mr. Dixon. Mr. Dixon has added other statements we have not submitted in response to the subpoena.

The Court: That is what I say, his comments are mere arguments.

Mr. Dixon: No.

Mr. Paradise: Yes. He said that these are the data that we have submitted in response to the stipulation.

The Court: No, no. A compilation is a compilation, you know, like a bookkeeper or an accountant, he always adds his comment, his gloss. That is a good old word. We will disregard the gloss, that is, the interpretation, and take them for compilations of certain particular facts.

If that is done, then, you see, we can mark the original stipulation and supporting date which were lodged with the clerk on May 8th. We can give them a number. We can call them 26 for identification and then call this compilation 26-A.

Mr. Paradise: If the Government's purpose is as stated by Mr. Dixon, to shorten the record——

The Court: I do not care what their purpose is. I am limiting their purpose.

Mr. Paradise: Oh, I see.

The Court: I am doing the way a cross examiner does. He says, "Don't you mean this?" I did that, I limited them in advance to the purpose and, as so limited, I can see no [fol. 2682] objection.

All right. Then we will change this to 26-A and 26 will be the original exhibit, with the understanding that 26-A is merely a compilation.

The Clerk: 26 and 26-A in evidence.

(The documents referred to were marked Plaintiff's Exhibits 26 and 26-A in evidence.)

Mr. Dixon: May I ask counsel, for the record? I think this is what he refers to, your Honor, and the reason I

am asking this question is that I want to be sure the record is straight on what I am about to ask, otherwise we may have to ask them to produce their witnesses to establish this fact which I am not certain is not in dispute.

The Court: Yes.

Mr. Dixon: That is, that the lease form, for example—do counsel have page 3 before them?

Mr. Paradise: Of the stipulation?

Mr. Dixon: Yes, of Government's Exhibit 26-A, is it, now? The language which we have added, your Honor, which obviously could not be in 26 because that was prepared before there were any exhibits in evidence, is that the data covered in the compilation submitted under Paragraph II is as follows, among other things, and the first and last sentences are taken from the stipulation as originally worked out prior to the trial. The only thing the [fol. 2683] Government has added there is this language:

> "The defendant refers to this type of outlet as an L-O station. The lease form of the defendant on this type of outlet is represented by Government Exhibits 1, 1a to g, inclusive, and by Government Exhibit 2."

Now, I hate to have to call someone from the defendant to establish that fact if it is not in dispute. If it is, I will be glad to do so. But that is added, your Honor, only to explain and tie up the compilation with the Government's exhibits, since the compilation does deal with only Form 542, you see, as is submitted by the defendant, and this is their own language. Form 542 L-O stations is what they referred to. And that is the only change, your Honor, that has been made. I mean of that type from the stipulation as originally drawn.

The Court: I think, gentlemen, there is no dispute at the present time that three types of stations are before the court, the L-O stations, the 337, and the 3-C's.

Mr. Dixon: If that is not in dispute, we do not need——

The Court: Is that in dispute?

Mr. Paradise: That most certainly is not in dispute. We dispute counsel's strained qualification of the L-O stations. There are various print forms of Form 542, all of which are attached to Defendant's Exhibit A. The L-O stations

referred to in Paragraph II that Mr. Dixon refers to cover [fol. 2684] all of those forms and are not limited to the forms of the exhibit that they are talking about.

The Court: No. He said, "this type." He does not say that. He said, "this type," the type that is represented by this form. He does not say it is the only type.

Mr. Dixon: That is right, your Honor.

The Court: I can be an awfully technical judge if you want me to be one.

Mr. Paradise: No.

The Court: You see, I can be very technical in withdrawing this language.

Mr. Paradise: If your Honor please, we are not trying to be technical. We had a stipulation with the Government concerning forms. Mr. Dixon said he wanted to expedite the time of trial, and yet he has spent two days trying to depart from that stipulation.

The Court: Let us not go into that. This has been a very ably conducted lawsuit, gentlemen. I want to congratulate you. You have certainly conducted this with about as little emotion as could be injected into a lawsuit. If I had the assurance that the case which is to follow will have as little emotion, I would be most happy, but I have not. I was nearly a wreck Monday with all the lawyers that were stepping in, just an ordinary antitrust lawsuit. I told them I didn't know what was the matter. Were [fol. 2685] they all suffering from the atmosphere or panic in which we live? I used to try these lawsuits involving millions, and no emotionalism was put in. And we have done very well in this particular case. So I am not going to allow them to tie you to an interpretation. His interpretation, it is like an accountant. For instance, every time you put on an accountant from Price-Waterhouse or a local accountant, you know very well they will give you the data and then they will have a gloss. I tell them to throw the gloss out and give me the data. I will make my own gloss, because it is natural for a person who summarizes to add his own interpretation.

So that is the spirit in which this is accepted.

Mr. Paradise: Thank you, your Honor. I join in your Honor's statement.

Mr. Dixon: May I say for the record, your Honor, that

counsel for the Government has absolutely no intention of any construction being placed upon anything here that would deprive the defendant of showing anything to the contrary or that might even lead to a favorable inference. This is merely descriptive, your Honor.

The Court: Let me make this observation, gentlemen. We are near the end of the Government's case. It seems to me at the present time, at the end of the Government's case, in view of what I stated at the end of the first week, it is much more apparent now, and that is this: That so far [fol. 2686] as the L-O stations are concerned and in view of your contention that you control them and that these men are at no greater power than an employee at will whom you can fire on 24 hours notice, between sunup and sundown, for that matter, it seems to me that the question before the court as to the L-O stations is going to turn into an inerpretation of what the relationship is, whether this nameless relationship is one where control can be legitimately exercised as though you were dealing with your own property, starting with the statment I made in the Standard case, that as to stations which you own yourself, you operate through employees, that the question of keeping anybody else out does not enter into it at all.

So in view of that approach, in view of your own stand in the matter, it makes very little difference how many forms of L-O contracts there were, because you claim the same rights as to all, do you not?

Mr. Paradise: Yes, sir.

The Court: All right.

Mr. Paradise: I appreciate your Honor's laudatory words. Our relationships with Government counsel have been excellent.

Mr. Dixon: We enjoyed it.

Mr. Paradise: I would like to add one more word concerning the last exhibits, however. I think that the Government exhibits should eliminate the two pages, the first [fol. 2687] two pages which purport to be a stipulation and which are not.

The Court: That is right. They should be taken out because you have not signed it. We will disregard the first two pages.

Mr. Paradise: And further, I call the court's attention to the fact that the stipulation itself, there are certain items in it consisting of the portion under the title "IV-B" which relates to uncontracted stations, to which the defendant objects.

Mr. Dixon: That is not in what we offered, counsel.

Mr. Paradise: I am telling what the original shows.

Mr. Dixon: Yes. That is why we did not offer that. This is the Government's record. If we offered that, the court would doubtless reject it.

Mr. Paradise: I am sure it would. I was mentioning—what was the exhibit number of the stipulation, Mr. Childress?

The Court: 26-A?

Mr. Paradise: What I meant was the stipulation, 26. If the court will refer to the data under the title IV-B in the stipulation, the data therein contained refers to uncontracted stations, and the defendant's objection is maintained as to that portion of the data contained in the stipulation.

Mr. Dixon: If the court please, we are not offering that.

The Court: No. You see, that is not in.

[fol. 2688] Mr. Dixon: I do not understand counsel.

The Court: That does not go in. That is merely marked for identification. That is not in evidence.

Mr. Paradise: I see. It is just the stipulation itself.

The Court: What is that?

Mr. Paradise: It is just the stipulation itself which is in evidence.

The Court: Yes. But I mean the data are not offered. I have excluded, on your objection, that fourth group of stations. Of course, I do not want it brought in. If you tried to bring it in the back door I would not let you, either of you, I mean. All right.

Mr. Dixon: If the court please, I just want to be sure that the record is clear on what the material is that the Government has offered. And if the first two pages, of course, are stricken, as they should be——

The Court: The material offered—I will fix the record—are pages 3 to 136 of this compilation, we will call it. You might change the title and call it "Compilation of Material."

Mr. Dixon: All right.

The Court: We strike out the words "Stipulation re Introduction" and say "Compilation of Certain Data." Call it just a "compilation."

Mr. Dixon: May we suggest that added to that be the [fol. 2689] language "Returned by the Defendant under the Subpoena Duces Tecum," so it will be descriptive of the source, your Honor?

The Court: I am leaving the entire thing there. I am just striking out the original words. "Compilation of Certain Data and Evidence Called for from the Defendant in a Subpoena Duces Tecum Dated February 7, 1951, Served on Defendant."

Mr. Dixon: In other words, you are striking the heading.

The Court: Not the heading. I am merely striking two words "Stipulation re Introduction" and calling it "Compilation."

Mr. Dixon: Oh, yes, "Compilation."

The Court: "Compilation of Certain Data."

Mr. Dixon: Yes. Well, that is all right.

The Clerk: The court is working off the title on the blue cover, not the interior portion of the document.

Mr. Dixon: The title is the same, Judge.

The Court: Yes, he knows it. We work like newspaper men. We use a black pencil.

The Clerk: Your Honor, there is one thing that is not clear, though. Government's Exhibit 26 is the stipulation itself, just those few pages, the only thing that is admitted?

The Court: That is in evidence. What is the number of [fol. 2690] that?

The Clerk: That is 26.

The Court: Well, why don't you call that 26——

The Clerk: That has the basic number of 26, your Honor.

Mr. Dixon: That is not what the Government offered into evidence, your Honor.

Mr. DeMartini: I do not think the Government has offered that: We have offered the stipulation part of that.

The Clerk: It was given a Government's number, your Honor, that is why.

Mr. Dixon: As I understand it, your Honor—may I step up to the bench?

The Court: No, no. I have got it.

Mr. Dixon: Your Honor has changed this.

The Court: Let me look at it. I will tell you what we will do. Let us take the stipulation there, by reference, and give it a defendant's number, and that solves the whole problem.

Mr. Dixon: Surely.

The Court: All right: The first four pages of the stipulation, give them a number.

The Clerk: Defendant's Exhibit L.

The Court: That is right. There you are, that settles it all. 26 is merely marked for identification as a source material of the other one. What we have done is just take the book and given it an exhibit number. In that last case [fol. 2691] we had one book and one man could take one page and give it a Government's number and the other, another one.

Mr. Dixon: Pardon me, your Honor, if I try to follow this at this time of the day. I just want to be sure.

The Court: Everything is all right.

Mr. Dixon: I just want to be sure of the physical state of the Government's case.

The Court: If tomorrow you think of something that should be supplied, all right. Everything remains as it is, except we have taken the first four pages of Plaintiff's Exhibit 26 for identification and called them Defendant's exhibit, that is all.

Mr. Paradise: May I suggest for the purpose of the record that the attachments to the stipulation be called another number for identification because——

The Court: No. The whole book is just like you have a bookkeeping book and then take two pages out. Leave it as it is. There will be no confusion then.

Mr. Paradise: I say that because the Government's source data is copied from the attachments to the stipulation.

The Court: That is right, but it excludes the stipulation.

Mr. DeMartini: Is it understood now that our stipulation is in evidence, it has been admitted into evidence?

The Court: That is right, as your exhibit.

Mr. Paradise: Thank you.

[fol. 2692] (The document referred to was marked Defendants' Exhibit L and received in evidence.)

The Court: If you come back tomorrow and find something has been put over, you let me know and we will straighten it out. You do not need it.

Mr. Dixon: I know we do not.

The Court: We have been doing this for 24 years, and Mr. Childress is a very competent clerk.

Mr. Dixon: After Mr. Childress gets it all straightened out, may I look it over, Judge?

The Court: Yes, you may look it over. All right, now what is next?

Mr. Dixon: The Government rests, your Honor.

The Court: The Government has rested.

Mr. Somerville: One more thing.

Mr. Dixon: Pardon me.

Mr. Somerville: May the record show that the Lester and Waugh stations referred to on pages 677-668 are L-O stations, and that the Weston station at 35th and 65th Avenue Northeast, Seattle, mentioned on page 722 is an L-O unit?

The Court: All right.

Mr. Paradise: So stipulated.

Mr. Dixon: I think there are one or two statements in the record, Judge. For instance, I think in the opening statement reference was made to the fact that I said that [fol. 2693] Standard had 11,000 stations, and it was 1100 company-operated stations. I think counsel for defendant may have some suggested changes, too. I do not think it is vital or necessary, but I assume at the end of the entire case such corrections as counsel agree upon for the record may be made with the approval of the court and be corrected, of course.

The Court: All right. Any amendments of fact that appear may be corrected before the case is concluded.

Mr. Paradise: The defendant has some motions to make. Would the court want to hear them now or prefer a recess at this moment?

The Court: I will have a short recess and hear the motions. Are they very long? I was going to continue the case other than the motions. I was going to give you until tomorrow to start the case.

Mr. Paradise: I can present the motions in the morning just as well if you prefer it. One is a motion to strike one

of the instruments that was admitted subject to motion to strike.

The Court: I will tell you, gentlemen. Mr. Childress and I have to work hard on a matter where the deposition is waiting on an order, and instead of counsel writing me, they sent me a telegram and I want the time before the office closes. So really, so long as the Government has rested, we can recess now and he and I can do that. I can [fols. 2694-2697] work later and so can he, but I cannot get the order in before 5:00 o'clock so I really need a little time to do that. Counsel are waiting, their deposition is being held up until I make a ruling on a matter that was heard Monday, and I have to do it in order not to crowd them too much. I need the time before 5:00 o'clock.

So we will adjourn until tomorrow morning at 10:00 o'clock, and then at that time you can begin the presentation of your case and, of course, any motion before you present any evidence that you desire to make may be made at that time.

Mr. Paradise: Thank you.

(Whereupon, an adjournment was taken until 10:00 o'clock a.m. of the following day, Thursday, May 24, 1951.)

[fol. 2698] The Court: All right, gentlemen.

Mr. Dixon: May it please the court, in connection with Government's Exhibit 26-A in evidence, counsel for the defendant have agreed to stipulate that the compilations contained in that exhibit, subject to check by the defendant are those submitted to the government pursuant to the items described in the particular paragraph numbers of the subpoena served on the defendants, as contained in the compilation. Is that right, counsel?

Mr. Paradise: Yes, that is correct, Mr. Dixon. I should mention this, and again not to be technical, your Honor, that was an important phase of the original stipulation, that it was stipulated, and this matter was discussed at considerable length with counsel for the government, that for the purpose of this case only all of the data and statements contained in that—

The Court: Just a moment.

Mr. Paradise: I was going to say that the stipulation is

contained in what I think is Defendant's Exhibit L, and it would be in paragraph 3, and it states:

> "For the purpose of this case only, all of the data and statements contained under the said respective numbers and captions attached to this stipulation and incorporated herein are stipulated to be true."

[fol. 2699] That stipulation, I understand, is still effective as to both exhibits.

The Court: All right.

Mr. Paradise: If the court please, the defendant would like to present, first, a motion to strike a particular exhibit. I believe the exhibit number to which the motion is addressed is Government's Exhibit No. 9.

The Clerk: There again, I do not have the original at the moment. May we have the Government's copy?

(The exhibit referred to was handed to the court.)

The Court: Oh, yes, I remember.

Mr. Paradise: The court will recall that objection was made to the introduction of that letter on the ground of materiality and in that it was remote and had no materiality to this case, that the letter was written thirteen years prior to the date of the commencement of the trial, and there had intervened a war, and conditions had changed. On page 203 of the transcript the court suggested that the defendant might reserve a motion to strike at the conclusion of the government's case, and the question involved is whether or not it has been sufficiently tied up.

We submit, if the court please, that there has been nothing to tie up this particular exhibit by any evidence or testimony before this court.

Now, if the court please, I would like to review the testi- [fol. 2700] mony that has any bearing upon that letter. Mr. King's testimony concerning that appears on these pages of the transcript: On page 130 he testified that defendant's contracts, sales contracts, on Form 337 have been written for a specified quantity, and that the obligation of the dealer is to buy a specified quantity.

On page 135 of the transcript he testified that in 1948 instructions were given that the quantity to be arrived at

was determined by a formula, and that the salesmen were instructed that no dealer was permitted to agree to purchase a quantity in excess of eight-five per cent of his past gallonage experience.

[fol. 2701] There is further testimony between there and page 138 of the transcript, at which point Mr. King testified that the dealer under that type of contract obligates himself to purchase a minimum quantity specified. I will for purpose of clarity mention that Mr. King was referring at that point to the form of 3-C sales contract, the new form of 3-C sales contract, which was adopted by the defendant in the fall of 1948, according to Mr. King's testimony.

The court will recall that on the 3-C stations, the sales contracts prior to that time, between the period of 1945 and 1948, contained a specific obligation on the part of the dealer—and here I am talking about the independent dealers, not the L-O stations,—on the part of the dealer to purchase his entire quantity.

Mr. King also testified, however, later in the transcript, at pages 142-145, that the same practice as to the fixing of quantities on the Form 337 sales contract, which is the other type of dealer station, occurred and that the instructions, first, in 1948 were that the dealer, regardless of his wishes, was not to be permitted to agree to buy a quantity in excess of 85 per cent of his past experience. And subsequently that formula was reduced to 75 per cent as a maximum upon his commitment. He was given a right, of course, to purchase an additional quantity up to a stated maximum. That testimony appears in the transcript on pages 142-146.

[fol. 2702] There was specific testimony concerning split pumps in the transcript at pages 192-205. That, I think, is probably closer to the subject of the relevance and materiality of this particular exhibit. The testimony there, summarized, is briefly this: Commencing on page 192, that a split pump station is one that handles gasoline from more than one supplier. I am summarizing Mr. King's testimony. That in 1938 Richfield had a small number of split pump accounts. Mr. King does not know any stations which are now handling Richfield gasolines and are at the same time handling gasoline of some other suppliers. Richfield in 1937 and 1938 was serving some split pump stations.

That in 1937 or 1938 Mr. King was instructed of Richfield policy "Not to serve such outlets which have split pumps." And that is, of course, consistent with the exhibit which was a letter written in 1938.

Mr. King was asked concerning the policy, the current policy, and he said that Richfield does not solicit the business, and I will quote from the record: "It is not our policy to supply or solicit the business of split pump service stations."

He testified the reason for that policy of current non-solicitation to be the fact that there are probably not over one or two per cent of all service stations on the coast today which are operated as split pump stations. This appears on page 197 of the record.

[fol. 2703] The Court: I remember.

Mr. Paradise: He does not recall—and I think this is important. This appears on pages 204 and 205. He does not recall that those instructions were ever affirmatively rescinded. He said that there was no need to, that the contents and the instructions just became meaningless as time went on.

The only other testimony in the record that could possibly connect this up to the present date could come from three other witnesses. I have examined the record most carefully in this regard. Mr. Nicholson was an ex-employee who was first in the northwest and then he was in Arizona as an assistant manager from 1941 till 1946. He testified that he did have instructions, "I think against split pump accounts in 1937 and 1938." That appears on page 275.

He testified on page 276 that the last instances where there was a practice involving split pump accounts occurred in 1940 and 1941.

In answer to the court's question he made some general statement on page——I do not have the page reference to it, but I can find it—that the policy did not change so far as he knew.

Mr. Nicholson, however, I believe the court will recall, was an unsatisfactory witness. The court mentioned, on page 269, that Mr. Nicholson's recollection appeared to be very hazy. He had difficulty in remembering.

[fol. 2704] The Court: But the point, however, is this: That, assuming there was no evidence indicative of a con-

tinuation of the policy, there is also no proof or evidence of the abandonment of the policy. And it is a fact in the chain of evidence which may be considered in determining what the motivation was for adopting the new system. Because ultimately we are dealing with a type of social legislation where it is very important to determine not only what an act is but what the object was.

So that this fact in the record commends itself to different kinds of argument. The Government may use it as a starting point for the proposition that, having determined not to have split pump accounts, they began to develop these methods which, in themselves, had the identical result, and then argue from there that these methods, both in their form and in their result, achieve the same results.

On the other hand, you can argue from the same facts that that ceased, that you simply were not interested for reasons of your own in split pump accounts and abandoned them, and what they did afterwards should be determined upon an independent basis.

In other words, if we strike this out, then we ought to strike out everything that King testified as to the existence of the policy and its abandonment.

[fol. 2705] So from what you have said, without referring to one or two other items of evidence which would not change the pattern, I am inclined to think that it certainly should not be stricken as an immaterial fact. It is certainly a material fact in the evolvement of the policy which the government complains of.

I agree with you that, this being an equity suit, we are not concerned with what they did in 1938 or 1937. We are interested in what they are doing today. Supposing the policy had been abandoned, nevertheless, as of today, since this is an equity suit and seeks an injunction as to future acts, what they did in the past may be a criterion of what kind of an injunction you are going to direct to it.

It isn't only true of this. It relates to any matter. For instance, in these rent cases that constantly keep coming up, we always have the problem of what type of an injunction to issue, and therefore, we inquire into whether the man still has the property or whether he has changed possession, and also whether he is guilty of other violations than the particular violation involved. In other words, to

determine whether there is such willfulness as to warrant the issuance of an injunction to prevent future action.

So, in view of the fact that this law suit to some extent determines what we should do in the future, and refers to future conduct, I believe that has a very material bearing [fol. 2706] upon the whole issues in the case.

Mr. Paradise: On the court's recognition that this is largely historic back in 1938, that was the reason for the motion. We felt it had not been tied up with testimony and, therefore, it was immaterial.

The Court: As I say, I am not evaluating its importance. That can be done only after all of the evidence is in, but I am just telling you why I think it is a material fact. The motion as to Exhibit 9 will be denied.

Mr. Paradise: The defendant now moves, if the court please, for a dismissal of the action under Rule 41(b), in so far as it pertains to the stations which we have referred to in this case as the independent stations, the 3-C's and the 337's.

The Court: You might as well save your time and my time. There can be no dismissal of a portion of a claim under our procedure. There is no such thing. The government's claim is in one cause of action, and as to any matters on which the government is not entitled to judgment, that can only be done at the conclusion of the case. There is no such thing as a failure to prove. It is like, for instance, if you are trying to prove five elements of damage, and you only prove one, you can prevail at least as to that.

You merely argue later on, if you are satisfied that as to the so-called dealer stations, as we have agreed to call them, there is no showing of control, and then you may argue [fol. 2707] the matter that as to that group the government has failed to show the existence of any monopolistic features.

Mr. Paradise: May I suggest, however, that the government's complaint has particularized in the manner in which the court mentioned earlier, between the two types of stations.

The Court: That is all right, but the complaint is not split. The prayer is as to all, and you cannot split them.

Furthermore, the motion for a non-suit has practically been abolished now, because we are required to make find-

ings. So why should I make findings of a one-sided presentation, when, if I make findings later they would be much stronger, even if I make them in your favor, if I do it on the basis of the conflict of testimony. Our Circuit Court practically canceled the motion for a non-suit even before the amendment to the rules, and because they adopted the absurd California theory of scintilla of evidence. They did it in a case involving me, and I have criticized the case, and I still say they are wrong. That is the Harvey case, and because they used California cases, they arrived at that conclusion, but those cases were cases tried with a jury, and when a judge tries a case without a jury, if at the conclusion of the plaintiff's case he said, "On the basis of the evidence I am satisfied the plaintiff should not recover," he is not going to change his mind if there are two more [fol. 2708] witnesses, but on the scintilla of evidence rule they ruled that way, and they retried the case and the jury decided what I decided. Ultimately the man got a paper victory.

But now they require us to make findings, so that even if your motion were good, I would deny it on the ground that I do not choose to make findings on a one-sided presentation of a case.

Mr. Paradise: Frankly, in making the motion we are basing it on your Honor's decision in the Carew case, in 43 Fed. Supp. But I understand the basis of your Honor's ruling.

The Court: They have changed that ruling. I began that opinion by stating that, fortunately, the scintilla of evidence does not apply here, and I received a compliment from writers in the East that I had the courage to do that, and then the court turned it the other way. In fact, Justice Miller wrote me that and said he was very happy to see that in Decisions California I adopted that theory. He was at that time on the Court of Appeals of the District of Columbia. So I criticized the Court of Appeals, as I have a right to, and just as you have a right, but when it comes to between ten and five, I have to follow them, but after that I do not. I also draw your attention to the fact that if you read the articles on Federal Rules, you will find most of them were speeches that I delivered right in front of them [fol. 2709] at our regular annual meeting. We have an-

other meeting next month, but I am not going to speak at this one.

The motion will be denied. Anything further?

Mr. Paradise: Yes. Before calling our first witness, your Honor, we would like to offer as Defendant's Exhibit next in order a third stipulation between the defendant and the government entitled, "Stipulation Re Introduction of Certain Evidence." May I have this marked first, for identification?

The Clerk: Defendant's Exhibit L, marked for identification.

Mr. Paradise: Not L.

Mr. DeMartini: L was the other stipulation.

The Clerk: That is right. This will be M, for identification. Thank you.

(The document referred to was marked Defendant's Exhibit M, for identification.)

Mr. Paradise: May I call the court's attention to particular provisions of this, for purposes of clarity. The stipulation tabulates and contains various statistical data. Paragraph 2 states that, "All of the data and statements contained under the said respective numbers . . . are . . . true."

Paragraph 3 contains this important qualification, that either party may offer in evidence the data attached and [fol. 2710] contained under the numbers and captions, with this provision, that the data contained under any respective number and caption shall be offered in evidence separately from the data contained under any other number.

Paragraph 4 provides that each party reserves the right to object upon the sole ground of lack of relevance or materiality, and except for such objections so reserved that each of the parties waives all other objections to the introduction of evidence.

Pursuant to the provisions of that stipulation, therefore, —first, may I offer the stipulation itself, the first three pages, in evidence?

The Court: It may be received.

Mr. Paradise: Now, pursuant to the procedure established by the stipulation, may I first then offer the material

under Caption I entitled, "Dates of Incorporation of Defendant And Of Qualification"—

The Court: Now, I will tell you what we will do. If we are going to take several portions of this separately, then you had better give them numbers under M. What would you call this,—M-1?

The Clerk: M-1, sir.

The Court: Then we will call M, for identification, the whole thing. Then we will call M-1 the stipulation.

Mr. Paradise: Good.

[fol. 2711] The Court: That is the first one you put in. What is your next number?

I have got him started now. You see, he is a very good technician. We got through with the memorandum last night at 5:00 o'clock, and he said, "Why don't you let me typewrite it, and that will finish it." So I said, "If you want to work until 5:30, that is all right." So we finished it.

The Clerk: M-1 in evidence.

(The document referred to was marked Defendant's Exhibit M-1, and was received in evidence.)

The Court: What next?

Mr. Paradise: The defendant offers as M-2 the statistical data contained under I, "Dates Of Incorporation Of Defendant And Of Qualification To Do Business."

Mr. Dixon: No objection.

The Court: It may be received.

(The document referred to was marked Defendant's Exhibit M-2, and was received in evidence.)

The Clerk: Just a moment. Will you find that for me?

Mr. DeMartini: I will.

The Court: Come stand with him and give him the number of pages, so that he will know.

Mr. Paradise: The defendant next offers the data under the caption II, entitled, "Date Of Commencement Of Business By Defendant."

[fol. 2712] Mr. Dixon: No objection.

The Court: It may be received.

The Clerk: Defendant's Exhibit M-3.

(The document referred to was marked Defendant's Exhibit M-3, and was received in evidence.)

Mr. Paradise: Defendant next offers the data attached under the Roman numeral III entitled "Comparison of Number of Service Station Outlets."

Mr. Dixon: The government objects to the admission in evidence of the table 2 of that portion of the stipulation.

The Court: I will have to look at it and see what it is.

Mr. Dixon: On the grounds of relevancy and materiality.

The Court: I will take the same attitude I did in the Standard case. I do not think it is material under the theory which I adopted, and which the Supreme Court allowed. However, it is a fact that may be considered. It may well be that the Supreme Court might change its attitude, and adopt the theory that there is a competition within the field, and it doesn't make any difference whether in your own stations you monopolize the outlet and you shut out competition, that they can go to the next fellow. The objection will be overruled.

The Clerk: That is Defendant's Exhibit M-4.

(The document referred to was marked Defendant's Exhibit M-4, and was received in evidence.)

[fol. 2713] Mr. Paradise: As defendant's next, I offer the data under V, entitled "Comparison of Quantities of Gasoline Manufactured."

Mr. Dixon: Wait a minute. You skipped IV.

Mr. Paradise: Forgive me. Defendant next offers the data under IV, entitled: "Comparison of Volume of Gasoline Sold Through Service Station Outlets."

Mr. Dixon: The Government objects to the admission into evidence of table No. 3 contained there.

The Court: The objection will be overruled, subject to the same limitations and purposes.

The Clerk: Defendant's Exhibit M-5.

Mr. Paradise: I presume that the court would prefer to wait until closing argument as to my argument on the relevancy and materiality of the exhibits.

The Court: No, no. I am not saying that. I am changing my mind. I am saying that if the evidence shows that of these stations which you control there was a complete shut-out of their product, it doesn't make any difference that the stations are only three per cent of the stations, because they are monopolistic to that extent. Just as the court said

in the taxicab case, when you monopolize 800 to 300—I forget what it was—that was a monopoly of a segment of the commerce. And the Supreme Court has approved that, so there is no argument about that.

[fol. 2714] I am merely letting them in so as to have them in the record. If you want to make an issue of that, I will strike them out so you have a good point.

Mr. Paradise: I would prefer to argue it at the end of the case.

The Court: Mr. Carlston—I haven't read the article yet but I saw it in the manuscript form—evidently the law school did not want it, because they would have included it in their own law review, so he sent it to me for comity. But his theory is that if there is a choice outside, then there can never be any monopoly.

Supposing I even monopolize 90 per cent of the trade, if the buyer still has 10 per cent to go on, then there is no monopoly. Well, of course, that would mean you could have a 99 per cent monopoly. You could say, why, there is still an open market. You could go to one station. Maybe it is located 10 miles away but it is open to him. He could drive there.

I am not criticizing his attitude because he is a lawyer and also an economist. But I am just saying that we will have to get the Supreme Court to change its attitude, and I do not think that the Supreme Court is going to change its attitude on that subject, and the Congress is not going to, because even the present Congress has shown its intention not to tamper with the antitrust laws. As a matter of fact [fol. 2715] they plugged the hole that the Supreme Court created by the Columbia Steel case, by passing a new law against vertical integration, and it just became law about two or three days ago.

Since, somebody called me up and wanted to know if a man could own two theatres now. I said, "The Government does not prevent you from multiple ownership. But if you shut out a product, then," I said, "the Government comes in."

So I do not want to intimate that I believe it is of any materiality, because that is the argument that the Standard made. But I am allowing it into the record so it will be there. As a matter of fact the Supreme Court, in its

opinion, said that while I considered the matter immaterial, I allowed the fact to go into the record and they were glad it was there because then they could argue on the law of the matter.

Mr. Dixon: The Government also wishes to object to the introduction into evidence of Table No. 4 on that.

The Court: All comparison tables, I will overrule the objection.

Mr. Dixon: I understand, your Honor.

The Court: With the statement I have already made that it is not my intention to change my mind or change the Supreme Court's mind. Incidentally, that decision is not only a five to three, it is a six to three, because Justice [fol. 2716] Douglas in his opinion did not indicate he was concurring or dissenting. He merely wrote a little essay on his interpretation. It was a very beautiful essay, but it had nothing to do with the case before us. He did not say whether it was right or whether it was wrong, and that is all there was before the court. But many good judges do that. One of the finest opinions on free speech is Mr. Justice Holmes' famous dissent in Abrahams against the United States. It is a beautiful thing, beautiful English, and it is a great little treatise on free speech. But when you get through with it you wonder what he thought about the case. What he told us was that such cases should not be brought, but he did not say why the case, as it was brought, should be reversed.

So I do not want the remarks I am making taken as critical of the court. I am merely stating a fact. Besides, this goes right up there if there is an appeal in this case. I want to be careful what I say about the big court.

The Clerk: That is Defendant's M-5.

The Court: All right.

(The document referred to was marked Defendant's Exhibit M-5 and received in evidence.)

Mr. Paradise: Defendant next offers the data attached to the stipulation under the title V, entitled: "Comparison of Quantities of Gasoline Manufactured."

Mr. Dixon: Objected to on the grounds of relevancy and materiality, your Honor, for the record.

[fol. 2717] The Court: Overruled.

The Clerk: Defendant's M-6.

Mr. Paradise: Defendant next offers the data under the title VI, entitled "Comparison of Taxable Sales of Motor Vehicle Fuel."

Mr. Dixon: Objected to on the grounds of relevancy and materiality.

The Court: Yes. Overruled.

The Clerk: That is Exhibit M-7.

Mr. Paradise: Defendant next offers the data under VII entitled: "Number of Competing Companies In Sale of Gasoline," with an exhibit attached to the data.

Mr. Dixon: Objected to on the grounds of relevancy and materiality.

The Court: It may be received. Overruled.

The Clerk: Defendant's Exhibit M-8.

Mr. Paradise: Defendant next offers the data under title VIII, entitled: "Number of Competing Companies In Sale of Automotive Lubricating Oil," with an exhibit attached to that data.

Mr. Dixon: Objected to on the ground of relevancy and materiality.

The Court: It may be received. Overruled.

The Clerk: Defendant's Exhibit M-9.

(The documents referred to were marked Defendant's Exhibits M-6, M-7, M-8 and M-9 and received in evidence.)

[fol. 2718] Mr. Paradise: Defendant next offers the data under the title IX, entitled: "Comparison of Volume of Automotive and Lubricating Oil (Including Grease) Sales."

Mr. Dixon: Objected to on the grounds of relevancy and immateriality.

The Court: It may be received. Overruled.

The Clerk: Defendant's Exhibit M-10.

(The document referred to was marked Defendant's Exhibit M-10 and received in evidence.)

Mr. Paradise: Defendant next offers the data under the title X, entitled: "Comparison of Volume of Tire Sales."

Mr. Dixon: Objected to on the grounds of relevancy and materiality.

The Court: Overruled.
The Clerk: Defendant's Exhibit M-11.

(The document referred to was marked Defendant's Exhibit M-11 and received in evidence.)

Mr. Paradise: Defendant next offers the data under title XI, entitled: "Comparison of Volume of Battery Sales."
Mr. Dixon: Objected to on the grounds of relevancy and materiality.
Mr. Paradise: Defendant next offers—
The Clerk: Just a moment. There is no ruling on that objection.
Mr. Paradise: Pardon me.
[fol. 2719] The Clerk: Is this exhibit admitted, your Honor?
The Court: It may be received.
The Clerk: It is Defendant's Exhibit M-12.

(The document referred to was marked Defendant's Exhibit M-12 and received in evidence.)

Mr. Paradise: Defendant next offers the data under the last title XII, bearing the title "Trends In (A) Population and (B) Motor Vehicle Registrations."
Mr. Dixon: Objected to on the grounds of relevancy and materiality.
The Court: That is Chamber of Commerce advertising. We will leave that in.
The Clerk: Defendant's Exhibit M-13.

(The document referred to was marked Defendant's Exhibit M-13 and received in evidence.)

Mr. Paradise: Defendant calls as its witness—
The Court: I think we had better take our morning recess now and then there won't be a breaking into the continuity of the testimony of any witness. All right, we will take a short recess.

(Short recess.)

[fol. 2720] Mr. Paradise: The defendant calls Mr. King, W. G. King.

W. G. KING, called as a witness by and on behalf of the defendant, having been previously sworn, was examined and testified as follows:

Direct examination.

The Clerk: Just take the stand. You have alread been sworn.

By Mr. Paradise:

Q. Mr. King, you have already been sworn in this action?

The Court: And it is still good, after two weeks.

The Witness: Good morning, your Honor. It is like a vaccination.

The Court: It is still good.

By Mr. Paradise:

Q. Mr. King, just to show your background with the Richfield Oil Corporation, it is my understanding you are presently vice-president and general sales manager, and have been since October, of 1949; that prior to that, and from August, 1946 to 1949 you were assistant to Mr. Dinkins who was the vice-president and general sales manager; and from 1937 to 1946 you were manager of the Richfield southern division; is that correct?

A. Yes, sir.

[fol. 2721] Q. Mr. King, just to establish your experience in the business of marketing petroleum products, how long have you been so engaged prior to 1937?

A. Prior to 1937?

Q. Yes. 1937 was the time of the commencement of business by this company.

A. Approximately nine years prior to that time.

Q. Mr. King, what are your primary duties and functions as vice-president and general sales manager of the Richfield Oil Corporation?

A. I have the responsibility for formulating and approving—not formulating, but approving all policies that

discuss the marketing department operations, all of which come under my direction. I have the final authority on procedures and policies and methods.

Q. All relating to the marketing of petroleum?

A. Exclusively to marketing, yes.

Q. Mr. King, will you describe for the court the organizational set-up of the marketing department of Richfield Oil Corporation, separating first the home office marketing organization from the division marketing organizational set-up?

A. Well, basically, first we have our home office marketing organization or department. In that are a number of individual departments, all having their separate func-
[fol. 2722] tions, such as a real estate department, merchandising department, lubricating sales department, bulk sales department, construction and maintenance, export, and so on.

Q. These are the home office departments?

A. These are home office departments.

Q. Do those departments have any direct contact with service stations either the so-called L-O stations or the independent dealer stations?

A. They have no direct contact. In other words, our divisions carry out all instructions. They, in effect, are the operating people and the only occasion that the home office organizations would have would be where they observe the manner in which policies and procedures are carried out in the field. But it is the responsibility of the divisions to place into execution the policies and procedures as formulated in the home office.

[fol. 2723] Q. Briefly, what are the primary functions and duties of the home office merchandising department?

A. The home office merchandising department has the responsibility of formulating the methods and the procedures that are used in the operation of our leased out service stations.

Q. And briefly, what are the primary functions and duties of the home office real estate department?

A. That department acts in an advisory capacity to me in relation to our purchase or lease of real estate for service station use.

Q. Does that department have any connection with the acquisition of service station properties?

A. No. In each of the divisions we have a division real estate department. They are the people who——

Q. I want to confine this part to the home office functions first, before you give the divisional.

A. No, the home office simply analyzes the propositions that are presented from the divisions. They analyze them and present them to me with various recommendations.

Q. Who is the head of the home office real estate department?

A. H. J. Brower.

Q. What are the primary functions and duties of the home office construction and maintenance department?

[fol. 2724] A. That department has the responsibility of the design, the planning of the various types of service stations that the corporation builds, plus bulk plants and other facilities that are used in marketing. They perform all the drafting, the designing, and formulate the policy which covers the carrying out of our construction maintenance activities in the field.

Q. Relating it primarily to service stations, what are the functions and duties of that department?

A. They direct the activities of the divisions in the building of company-owned service stations and their maintenance and repair.

Q. Is it correct that those three home office departments, merchandising, real estate department, and construction and maintenance, are the only home office departments that have any even indirect contact with service stations?

A. Yes, that is correct.

Q. How many divisions does Richfield have?

A. We operate through three divisions, northern, central, and southern division.

Q. Is the organizational setup of the three divisions comparable? Are they all the same, approximately?

A. The three divisions are all comparable, yes.

Q. Will you describe for us briefly the general organizational setup of the divisions?

[fol. 2725] A. Each division is headed by a manager who is called the division manager, and he has a staff of assistants, such as he may have two or three individuals

whom we call assistant managers in charge of operations, then he will have an assistant manager in charge of merchandising, an assistant manager in charge of real estate, assistant manager in charge of TBA, and construction and maintenance manager.

Q. Taking those separately, what are the functions and duties of the assistant division manager in charge of merchandising, one of those that you mentioned.

A. The assistant division manager in charge of merchandising has the responsibility of directing the operations, exclusively, of our leased out service stations, and he has a considerable staff for that purpose.

Q. Does the assistant division manager in charge of merchandising in any of these three divisions have any functions or duties with respect to any service stations other than the L-O stations?

A. No, he has no responsibility nor has any activity in connection with other than the L-O service stations.

Q. Who are the assistant division managers in charge of merchandising in the three respective divisions?

A. In the southern division, Mr. Burgner, in the central division, Mr. Dusto, and in the northern division, Mr. Chapman.

Q. You also mentioned an assistant division manager [fol. 2726] of operations in each division. Generally, what are the primary functions and duties of that office?

A. The assistant managers in charge of operations, they operate certain designated territories and have under their direction such individuals as branch managers and salesmen in the various categories. And their responsibility is devoted to the solicitation of business in the independent dealer classification and the commercial and consumer classifications.

Q. In the division offices are there such personnel classified as salesmen and merchandisers?

A. Yes. We have that classification of merchandisers and, as contrasted with that, line salesmen and territorial salesmen.

Q. Before we bring down the salesmen, will you first state what are the differentiating factors, if any, between the salesmen, on the one hand, and the merchandisers, on the other?

A. The merchandisers devote their entire time to the operation of Richfield leased out service stations. Our salesmen, on the contrary, have no responsibility for the leased out service stations and their entire time is devoted to the solicitation of business falling in the classifications of independent dealer, commercial and consumer.

Q. You have referred to L-O stations. Would you state [fol. 2727] what is the type of station to which you refer as an L-O station?

A. I refer to those stations that are owned in fee by the corporation, or where both the real estate and the improvements are owned by the corporation, or, second, where the corporation leases the land and erects improvements, or, third, where we have arranged for a property owner to improve the site with a station conforming to our design and specification, which in turn is then leased to the corporation. And I refer to stations that may have heretofore been in operation or have been constructed heretofore that we work out a lease with the owner of the property.

Q. Does Richfield have any L-O station, as you have so defined it, the L-O operation of which is—I will withdraw that. I assume from your answer that there are two basic types of L-O stations, one where Richfield owns the fee itself, and others where it leases either the land or the buildings or both, is that correct?

A. Yes, sir.

Q. In any situation, calling your attention to the second group where Richfield has a lessor and Richfield has a leasehold interest in that particular L-O station, does Richfield have any L-O stations where the L-O operator is the same person from whom Richfield has leased the station?

A. I do not know of any. I do not know of any such [fol. 2728] situation. It would be extremely unusual for such a condition to arise that would involve our taking or leasing a service station property under our customary real estate lease and then turning around and leasing it to the individual and operating it as an L-O station.

Q. To whom do you refer when you speak of an independent service station dealer?

A. We consider an independent service station dealer as an individual who owns his place of business or leases it from others.

[fol. 2729] Q. What is Richfield's connection with such a person?

A. Well, in the normal solicitation of independent dealer business, we endeavor to enter into a contract with those dealers, wherein we will agree to sell them and they agree to buy a specified quantity of gasoline.

Q. Now, going back to the personnel in these division offices, and calling your attention to the particular division of personnel which you have referred to as merchandisers, —by the way, are there more than one classification of merchandisers?

A. Yes. We have individuals that we class as merchandisers. They generally have the responsibility of the operation, or direction and operation, of, oh, as many as 20, 18 or 20 of our leased out stations.

Then there is an individual whom we call the special merchandising representative, who is senior to him, and his responsibility is to direct the activities of four to five merchandisers, and all of this organization are, in turn, responsible to and under the authority of the assistant manager in charge of merchandising.

Q. That is the general line of command, as you have described it?

A. Yes, sir.

Q. Now, what are the duties of the merchandisers, with respect to the subject-matter of the operators of these [fol. 2730] stations?

A. Their duties and responsibilities are to select the desirable individuals as operators for our L-O stations, and after they have been selected, to instruct them and direct them in the company's policies and procedures and instructions, as they relate to the operation of the L-O stations.

Mr. Paradise: May I ask that there be marked for identification an instrument consisting of several sheets, the first of which is a printed form, No. 700, and attached to it is a series of mimeographed pages, entitled, "Work Habits," the first page of which relates to Classification of Branch Merchandiser.

The Clerk: Defendant's Exhibit N, marked for identification.

(The document referred to was marked Defendant's Exhibit N, for identification.)

By Mr. Paradise:

Q. Mr. King, showing you Defendant's Exhibit N, would you state what this represents and—well, just what it represents?

A. Well, in this exhibit there are two documents. One is our Form 700, which is the job classification, which is an analysis of the functions and responsibilities, and the place that the individual occupies in the organization.

Q. To what classification of employee does that particu- [fol. 2731] lar instrument relate?

A. This particular instrument relates to a branch merchandiser.

Q. What uses have been made of the instrument that you have just described, the job classification?

A. All positions in the corporation are so classified. This is to evaluate the position, define its scope, responsibility and authority, as well as the line of authority of the individual occupying it.

Q. Now, has this instrument been issued to branch merchandisers as an outline of their duties or functions?

A. No, this is not issued to the individual. He is acquainted with the contents of it, so as to better acquaint him with the scope of his position.

Q. I am referring to the job classification, not to the Work Habits.

A. That is right.

Q. Yes. Now, would you refer to the other sheets attached to the exhibit and describe what those consist of, and to what purpose they have been put?

A. This sheet is entitled, "Work Habits—Branch Merchandiser," and it is a summary of his duties. It is an outline of the—it is a detailed outline of the work that we expect a branch manager to perform, and his responsibility of directing the operations of our L-O stations.

[fol. 2732] Mr. Paradise: I offer this exhibit as Defendant's next in order.

Mr. Dixon: The government objects to it solely on the

ground of relevancy and materiality, your Honor, for the record.

The Court: Let me see that.

(The document was handed to the court.)

The Court: We have heard so much about the merchandiser, and I think that has a bearing upon his duties and responsibilities, and has materiality. Overruled.

Mr. Paradise: That is the purpose for which it is offered, your Honor, as the background of the organizational set-up.

The Clerk: N in evidence.

(The document, heretofore marked Defendant's Exhibit N, for identification, was received in evidence.)

Mr. Paradise: May I ask that there be marked, for identification, as Defendant's Exhibit N-1 similar instrument relating to territorial merchandiser, as distinguished from branch merchandiser.

The Clerk: So marked.

(The document referred to was marked Defendant's Exhibit N-1, and was received in evidence.)

By Mr. Paradise:

Q. Directing your attention to Defendant's Exhibit N-1, Mr. King, does this instrument serve the same purposes, [fol. 2733] with the exception that it relates to a different classification of merchandiser?

A. Yes, this serves the same purpose and relates to what we call a territorial merchandiser, who operates in other than what we call salary operated territories.

Q. What are those other than salary operated territories called?

A. Commission agencies.

Q. Would you describe that a little more? Just who are the commission agents, and where do they operate, as distinguished from other territories?

A. We have certain territories wherein Richfield operates a wholesale bulk plant, and where we install an individual we call a commission agent, whose responsibility is the sale and distribution of our products in that territory. That is to be distinguished from our other form of opera-

tion, which we call branch operation, and where the employees are all salaries employees of the corporation.

Q. Calling your attention to Government's Exhibits 6, 6-A, and the group which are entitled "Commission Agency Agreements," are the persons to whom you referred as commission agents the ones who operate under agreements of that nature?

A. Yes. This is a Form 537 commission agency agreement, and that is the form that we use with the commission [fol. 2734] agents.

Q. Are these two forms, the Job Classification and the Work Habits covered by Exhibit N-1, for identification, used the same as you have already described with respect to the forms covering the branch merchandiser?

A. Yes, sir.

Mr. Paradise: Defendant offers Exhibit N-1 in evidence.

Mr. Dixon: The same objection, your Honor.

The Court: Overruled.

The Clerk: N-1 in evidence.

(The document, heretofore marked Defendant's Exhibit N-1, for identification, was received in evidence.)

Mr. Paradise: Defendant asks to have marked as Defendant's Exhibit N-2, for identification, similar instruments relating to Job Classification and Work Habits—Special Merchandising Representative.

The Clerk: So marked.

(The document referred to was marked Defendant's Exhibit N-2, for identification.)

By Mr. Paradise:

Q. Mr. King, will you state whether the use and purpose of this Exhibit N-2, is the same as you have related with respect to the branch merchandiser and the territorial merchandiser?

A. Yes, it is.

[fol. 2735] Q. To what classification of personnel does this relate?

A. Special merchandising representative.

Q. Are there any differences in the functions and duties

of the special merchandising representative from those of either the branch merchandiser or the territorial merchandiser?

A. Yes. The special merchandising representative is in charge of a small group of either branch merchandisers or territorial merchandisers.

Q. Oh, he is in more——

A. Of a supervisory——

Q. Oh, he is in a supervisory——

A. ——managerial capacity.

Q. And the Job Classification and the Work Habits are similarly used to the others; is that correct?

A. The purposes of the two forms are the same. Naturally, they differ as to contents, because the position is different.

Q. Is it correct that the Work Habits generally constitute the instructions to those classifications, those three separate classifications?

A. Yes, the Work Habits are to guide the special merchandising representative in carrying out his duties in connection with the supervising of the activities of either [fol. 2736] the branch merchandiser or territorial merchandiser.

Mr. Paradise: Defendant offers in evidence Exhibit N-2.

Mr. Dixon: The same objection, your Honor.

The Court: Overruled.

The Clerk: N-2 in evidence.

(The document, heretofore marked Defendant's Exhibit N-2, for identification, was received in evidence.)

By Mr. Paradise:

Q. Now, do all of these three categories of employees that you have referred to, the branch merchandiser, the territorial merchandiser, and the special merchandising representative,—are those the persons you said had to do with L-O stations?

A. Their duties and responsibilities are entirely confined to our L-O service stations.

Q. Now, calling your attention to the personnel in the division which you have referred to as salesmen, will you state what their primary functions and duties are?

A. We have two classes of salesmen, the line salesman and the territorial salesman. I shouldn't confine that to two classes. We have the line salesman, territorial salesman, industrial salesman, and possibly another classification.

Q. Well, which are the salesmen who contact the independent dealer accounts?

A. Those are the line salesmen and the territorial [fol. 2737] salesmen.

Q. What determines whether a particular account is contacted by a territorial salesmen or by a line salesman? Do they work in different types of territories?

A. They work in different types of territories. The line salesman is confined to our salaried branch operation, and the territorial salesman is confined to those territories operated by commission agents.

[fol. 2738] Mr. Paradise: I ask to have identified as Defendant's Exhibit N-3 similar documents relating to line salesmen-branch.

The Clerk: So marked.

(The documents referred to were marked Defendant's Exhibit N-3 for identification.)

By Mr. Paradise:

Q. Mr. King, calling your attention to Exhibit N-3 for identification, will you state whether the purpose and use to which these instruments, that is to say, the job classification and the work habits, respectively, have been put?

The Witness: Just repeat your question, Mr. Paradise.

Mr. Paradise: Will you read it, Mr. Bargion?

(Question read by the reporter)

A. The Form 700, which is the job classification, outlines the scope, duties, functions, and the relationship of this position in the organization to all others. This is the—the one I have here refers to line salesmen.

Q. Is it correct that these job classifications are sent to the division offices primarily for statistical purposes?

A. That is correct, as a matter of instruction to the managerial people in managerial positions as to the scope

and the contents of each of the various jobs in the organization.

[fol. 2739] Q. And the work habits, the use to which the work habits is put?

A. Similarly, the work habits that I have here for branch salesmen is a detail of the work and the manner in which he shall handle his assignment.

Mr. Paradise: Defendant offers into evidence Defendant's Exhibit N-3.

Mr. Dixon: The same objection, your Honor.

The Court: Overruled.

The Clerk: N-3 in evidence.

(The document referred to was marked Defendant's Exhibit N-3 and received in evidence.)

Mr. Paradise: Defendant asks to have marked as Defendant's Exhibit N-4 similar instructions, both job classification and, on separate sheets, work habits relating to territorial salesmen as distinguished from line salesmen.

The Clerk: So marked.

(The document referred to was marked Defendant's Exhibit N-4 for identification.)

By Mr. Paradise:

Q. Handing you Defendant's Exhibit N-4 for identification, Mr. King, will you state if the use to which those two instruments are put is the same as you have already testified concerning line salesmen?

A. Yes, these are the same and apply to territorial salesmen.

[fol. 2740] Q. And the difference between territorial salesmen and line salesmen solely pertains to the type of territory in which he operates, is that correct?

A. Yes, sir.

Mr. Paradise: Defendant offers Exhibit N-4 for identification into evidence.

Mr. Dixon: Same objection, your Honor.

The Court: Overruled.

The Clerk: N-4 in evidence.

(The document referred to was marked Defendant's Exhibit N-4 and received in evidence.)

The Court: I think this is a good time to stop, gentlemen. We have Judge Weinberger from San Diego visiting us and I promised, for a change, to go to lunch with the judges and they are waiting for me. All right, 2:00 o'clock.

(Whereupon, a recess was taken until 2:00 o'clock p.m. of the same day, Thursday, May 24, 1951.)

[fol. 2741] Los Angeles, California, Thursday, May 24, 1951. 2:00 p.m.

The Court: Proceed.

W. G. KING, called as a witness by and on behalf of the defendant, having been previously sworn, was examined and testified as follows:

Direct examination (Continued).

By Mr. Paradise:

Q. Mr. King, before we leave the subject of salesmen and merchandisers, would you state how many salesmen there are, and I am speaking of the aggregate in all three divisions?

A. Approximately 75.

Q. What is the aggregate number of merchandisers in all three divisions?

A. Approximately 110.

Q. Now, does that latter number include both the branch merchandisers and special merchandiser representatives?

A. All classifications of merchandising representatives.

Q. Is the authority to enter into agreements made the subject of a written authorization?

A. Yes.

Q. A written delegation of authority?

[fol. 2742] A. That's right.

Mr. Paradise: I ask that this instrument entitled "Chart of Authorized Signatures," showing a revision date 1-1-51, be marked for identification.

The Clerk: Defendant's Exhibit O, marked for identification.

(The document referred to was marked Defendant's Exhibit O, for identification.)

By Mr. Paradise:

Q. Mr. King, I show you Defendant's O, for identification, and ask you to state what that represents.

A. This is what we call our chart of authorized signatures for the marketing department. It lists all printed documents, whether they be contracts, leases, rescissions, of printed forms that are in use in the marketing department, and it designates to whom authority has been given to execute these agreements.

Q. Now, which agreements referred to in this chart of three pages are the agreements pertaining to service stations, or would you tell me under which category the service station agreements are classified?

A. They come under category H, "Leases, contracts, and agreements."

Q. Will you explain what these numerals and symbols mean in the right-hand column of that chart?

[fol. 2743] A. Well, if you refer to the third page, you will see a list of those people in the marketing department who are authorized to execute these various agreements, and the numbers that appear in the column here are keyed to that group of individuals.

Q. I would like to ask you a question concerning page 3. There is a note there with two asterisks, and it states following that identification, "Approval of one, two, three or four required," and said paragraph (a) is, "When the agreement contains unauthorized alterations or insertions in conflict with the printed proviso or form, or in violation of established company policy." Will you state the purpose of that provision?

A. That provision, that requires that any of the forms that we use under category "H" that may be altered in any form or fashion, require that the person normally delegated the responsibility of executing them cannot do so,

and they must be referred to me personally or to three of my personal nominees.

[fol. 2744] Q. Let me see if I understand that. That if there are any deviations from the printed form, none of your subordinates have authority to sign them unless they are referred to you?

A. That is right.

Q. Or to designate members of your staff?

A. If there is any change whatsoever in the printed form of our contracts, then they must be referred to me personally or to these designated three individuals whom I have appointed here, to authorize their acceptance or rejection.

Q. Who are those three persons?

A. Mr. Mayfield and Mr. Hutchinson, who are my assistants, and Mr. Nelson who is my chief clerk.

Q. And they are members of your home office marketing staff in the executive office?

A. That is right.

Q. These printed forms that you refer to, by whom were those prepared?

A. Those printed forms are all prepared by our legal department.

Mr. Paradise: Defendant offers Exhibit O in evidence.

The Court: It may be received.

Mr. Dixon: Our usual objection, your Honor, for the record.

The Clerk: Counsel has objected. Is this admitted, your [fol. 2745] Honor?

Mr. Dixon: Yes. It has been overruled.

The Court: What is it, the same objection?

Mr. Dixon: The same objection, your Honor.

The Court: Let's see. When we had the Standard case here we numbered the objections by number so as not to repeat them. We had No. 1, No. 2, No. 3, you see. All right, gentlemen, objection will be overruled.

The Clerk: O in evidence.

(The document referred to was marked Defendant's Exhibit O and received in evidence.)

The Court: This is off the record.

(Brief discussion outside the record)

The Court: Is this my copy?

Mr. Paradise: I merely gave you that for illustration.

The Court: Is this an extra copy you want me to keep, or is that an exhibit?

The Clerk: It is separate from the exhibit. Defendant's Exhibits O-1 and O-2 marked for identification.

(The documents referred to were marked Defendant's Exhibits O-1 and O-2 for identification.)

By Mr. Paradise:

Q. Mr. King, that chart of authorized signatures have there been prior issuances of a chart of authorized signatures?

A. The chart of authorized signatures has been in effect [fol. 2746] ever since the inception of the company.

Q. It appears that the revisions are largely in the alteration of form numbers and the personnel authorized to sign, is that correct?

A. That would be about the only changes, the individuals as they may change from time to time, and the forms as they may change.

Q. I show you Defendant's Exhibits O-1, which is a chart of authorized signatures dated March 1, 1941, and Defendant's Exhibit O-2, which is a similar chart dated February 15, 1939, and ask if those are the ones to which you refer?

A. Yes, they are.

Q. Do those forms also contain the provision concerning alteration of forms and limitations on authority of your subordinates to sign contracts?

A. They do.

Mr. Dixon: You mean other than are contained therein?

The Witness: I did not hear you, sir.

Mr. Dixon: Other than are contained in your exhibit?

Mr. Paradise: No. The defendant offers O-1 and O-2.

Mr. Dixon: The same objection. Do you have a copy of that, counsel, so we can follow it?

Mr. Paradise: Yes, I will furnish that to you right away.

[fol. 2747] The clerk: O-1 and O-2 in evidence.

(The documents referred to were marked Defendant's Exhibits O-1 and O-2 and received in evidence.)

By Mr. Paradise:

Q. Except as set forth in those charts of authorized signatures, Mr. King, has any authority to enter into any contracts, agreements or understandings, either written or oral, binding on Richfield Oil Corporation been given or delegated to any person in the Richfield marketing department?

A. No authority has been delegated to any person in the marketing department to enter into any agreement on behalf of the company other than on the printed forms that are listed in that chart, including any oral agreement.

Q. Does any subordinate of yours in the Richfield marketing department have authority to enter into any oral agreement?

A. No, sir.

Q. Binding upon the Richfield Oil Corporation?

A. No, sir.

Q. Has any authority been granted to the commission agents whom you mentioned this morning to enter into any contract or agreement or understanding binding on Richfield?

A. No, sir.

Q. That is to say, either written or oral?

A. Yes, sir.

[fol. 2748] Q. By "yes" you mean you understand my question?

A. I do. In other words, to answer your question, the commission agent is not authorized to enter into any agreement, oral or written, on behalf of the company.

Q. These exhibits, these charts of authorized signatures, in the portions relating to the division offices refer to authorized signature of the service station documents by division managers and chief division clerks or division chief clerks. Are there any other personnel in the three division offices who have authority to sign any contracts or agreements in Richfield's name or on Richfield's behalf?

A. None other than the division manager and his chief clerk, and then only when there is no alteration in the document.

[fol. 2749] Q. Has any authority ever been given to any salesman or merchandisers to enter into any agreements on Richfield's behalf?

A. No, sir.

Q. Written or oral?

A. Written or oral.

Mr. Paradise: May I have Government's Exhibit 1-E?

By Mr. Paradise:

Q. Mr. King, I will show you the printed form, which is Government's Exhibit 1-E, which is entitled, "Form 542. Richfield Oil Corporation Service Station Lease," with a print date of February 2, 1944, and ask you if that is the form of instrument that is used between Richfield and the operators of Richfield's L-O stations.

A. It is.

Q. Now, who are authorized to sign that form on Richfield's behalf, that is to say, assuming that there were no alterations in the printed form?

A. The division manager or his chief clerk.

Q. Is there any agreement between Richfield and the L-O operator, that is to say, the operator of the L-O station, to which this pertains, other than what is contained in this form of lease?

A. There is no other agreement, written or oral.

Q. What is the practice which is followed, if there is a uniform practice, in respect to the time at which this [fol. 2750] 542 form is signed by the prospective or incoming operator in one of Richfield's L-O stations?

A. After an operator has been selected and has been told or been instructed in the manner of the operation of the station, and what Richfield expects him to do, then Form 542 is reviewed with him, and at that time the operator executes or signs the agreement, which is then forwarded to the division office for acceptance and execution.

Q. I think you referred in your testimony, when you were called as a witness by the government, to the things that an operator is expected to do and told to do, and I don't cover that same ground.

Now, is the practice uniformly followed, of having this

prospective operator sign a form 542 before he is installed in the station?

A. That is our practice.

Q. I believe you described this morning the four different categories or types of Richfield L-O stations. Would you tell me, Mr. King, what is Richfield's reason for having or acquiring L-O stations?

Mr. Dixon: If the court please, I object to that question as immaterial.

The Court: Overruled.

The Witness: Richfield has found from experience through the years that it cannot depend upon a sufficient [fol. 2751] volume of business derived through independent dealers to maintain a stable market for its production.

I might point out that the market for gasoline is represented probably by 75—I would like to point out, rather, that about 75 per cent of the market for gasoline is resale, and the balance is represented by commercial and consumer accounts, as well as various subdivisions of the government.

Richfield found that with the intense competition for the independent dealers' business, and the rate of turnover, that it could not depend upon that group as offering a stable market for its product.

By Mr. Paradise:

Q. Stability of outlet, then, is the prime factor? Do I properly understand your answer?

A. Stability, and in order to find a market for its products.

Q. Has it been Richfield's experience that sales account contracts, which it has had with independent dealer stations, to which you referred, have been lost from time to time?

Mr. Dixon: I object to that, your Honor, as being wholly irrelevant and immaterial.

The Court: Overruled.

The Witness: As I have mentioned, there is intense competition for the business of the independent dealers, [fol. 2752] and Richfield is constantly losing accounts in that category to competition.

By Mr. Paradise:

Q. Does Richfield continue to solicit business of that sort?

A. Naturally. Richfield salesmen and representatives are continuously soliciting business in that category.

Q. Has Richfield's needs for service station outlets, as you have described it, increased or decreased during the past ten-year period?

Mr. Dixon: I object to that as irrelevant and immaterial, your Honor:

The Court: Overruled.

The Witness: Richfield's need for additional outlets has greatly increased, particularly in the post-war period.

By Mr. Paradise:

Q. Would you describe what, in your opinion, have been the chief factors that have caused such increase of need for service station outlets?

A. Richfield found itself in a very precarious situation following the end of the last world war. I——

Mr. Dixon: If the court please, I think that is a rather broad statement. I do not wish to object, if your Honor feels it proper, but I think that statement is obviously inappropriate, and is strictly the conclusion of this witness, the precarious position——

The Court: State facts. We are not held by generaliza-
[fol. 2753] tions. Tell us what the situation was that existed.

By Mr. Paradise:

Q. Have there been, Mr. King, certain specific factors which have contributed to Richfield's increased need for service station outlets?

A. Yes.

Q. Will you recite what those have been?

A. At the end of the last war, Richfield found itself with greatly increased manufacturing facilities, refining facilities, which were built during the war in order to help satisfy the military's demand for gasoline and other products and——

Q. Do you know how those increased facilities came into being,—at whose request?

A. At the government's request.

Mr. Dixon: If the court please, I certainly object to that question as being wholly irrelevant and immaterial.

The Court: Overruled.

The Witness: At the end of the war Richfield found itself with greater refining capacity than it had a market for, because the government's large purchases of aviation gasoline and other products almost immediately stopped.

By Mr. Paradise:

Q. Do you know when they ceased? Did they cease as of a particular date?

A. Well, I remember that the government's orders and [fol. 2754] requirements for gasoline stopped within a matter of days following V-J-Day.

Q. That was in the fall of 1945?

A. Yes, sir.

Q. Have there been any other factors which have contributed to the increased needs for service station outlets?

A. Yes. Since the end of the war, why, Richfield has been the fortunate discoverer of new crude—new oil fields, and found itself with the necessity of finding a market for this oil.

Q. Has there been any change in the market demands for gasoline during the period that you have mentioned?

A. Due to the vast increase in population on the Pacific Coast, which is our marketing territory, there has been a very steady and substantial increase in the demand for various of the petroleum products since the end of the war.

[fol. 2755] Q. Would you be in a position to state the approximate percentage of increase?

A. Yes. As far as gasoline is concerned that can be very quickly and readily determined by a reference to the State gasoline tax reports which are available in all of the states in which we operate. And I recall that the increase in 1950 —this is the actual sales, now—the actual sales in 1950 were approximately 60 per cent in excess of what they were in 1941.

Mr. Dixon: May the record show a continuing objection, your Honor, to this line of questioning on the part of the Government?

The Court: All right.

By Mr. Paradise:

Q. What steps, if any, has Richfield taken to satisfy such increased need for service station outlets subsequent to the end of World War II?

A. It was readily apparent to our management that—

Q. Well, not what was apparent to the management, but what steps have been taken, Mr. King, just facts?

A. The necessary capital funds have been made available to the marketing department for the purchase of property and the erection of service stations to satisfy our requirements.

Q. Did you personally work on a budget that was designed to provide for the increase of service station facilities?

[fol. 2756] A. Yes, I did.

Mr. Paradise: I ask that there be marked for identification as the Defendant's exhibit next in order a group of photostatic pages, with a first page which is typewritten and entitled: "Marketing Department Proposed Capital Expenditures By Items."

The Clerk: Defendant's Exhibit P marked for identification.

(The document referred to was marked Defendant's Exhibit P for identification.)

By Mr. Paradise:

Q. Mr. King, I will ask you to examine Defendant's Exhibit P for identification and state whether that is the instrument to which you referred as a budget?

A. Yes, this is the copy of the capital budget as approved by our board of directors.

Q. Prior to your preparation of this budget, Mr. King—well, let me ask you this: At the time this was prepared were you then executive assistant to Mr. W. T. Dinkins who was then vice-president in charge of marketing?

A. I assisted him in the preparation of this budget in my capacity as manager of the southern division and also as his executive assistant.

Q. What instructions did he give to you in connection with the preparation of this budget?

A. My instructions were to determine where the company needed additional service station representation and in [fol. 2757] what numbers and in what locations, so as to enable us to adequately market the increased production of our refinery.

Q. In connection with those discussions or instructions did Mr. Dinkins instruct or inform you as to the need for the budget and for the expanded facilities?

A. Oh, that was discussed. That was naturally discussed many times in our meetings, because we all knew of our inventory situation and the increased manufacture.

Q. In summary, what were you informed in that respect?

A. Of the urgent necessity of acquiring and building, acquiring new properties and building new service stations so as to satisfy this increased production.

Q. When you speak of increased production are you referring to the increased capacity for gasoline at the refineries that you have referred to?

A. The increased refinery facilities that had been built up during the war.

Q. And are you referring also to the matter of the excess gasoline available as a result of the discontinuance of purchases by the Government?

A. By the Government. In other words, to take up the slack in that respect.

Q. Was this budget approved by the board of directors of the corporation, that is to say, Richfield Oil Corporation, Mr. King?

[fol. 2758] A. Yes, it was.

The Clerk: Defendant's Exhibit P-7 marked for identification.

(The document referred to was marked Defendant's Exhibit P-1 for identification.)

Mr. Paradise: The defendant asks that Exhibits P and P-1, being respectively the budget and the certified copy of

the resolution of the board of directors approving the budget, be admitted into evidence.

The Court: All right.

Mr. Dixon: The same objection.

The Clerk: These are admitted, your Honor?

The Court: Yes.

The Clerk: Exhibits P and P-1 in evidence.

(The documents referred to were marked Defendant's Exhibits P and P-1 and received in evidence.)

By Mr. Paradise:

Q. Mr. King, I show you Defendant's Exhibit M-4, which is table III attached to a stipulation between the Government and Richfield, and this exhibit is entitled: "Comparison of Number of Service Station Outlets." I call your attention particularly to page 5 and table I of that exhibit.

If the court would be interested in following this particular matter, I have an additional copy of this exhibit.

Mr. King, this table is entitled "All States" and am I [fol. 2759] correct in the statement that the four columns represent respectively the year, the number of L-O stations for those respective years, the number of dealer 3-C stations, the number of dealer stations, and the total number of stations for each such year?

A. That is correct for the years 1938 to 1950, inclusive.

Q. The dealer stations that are there referred to, is it also correct that that represents what we know as the so-called 337 stations?

A. That is correct.

Q. Pursuant to that budget that was prepared in 1946 and approved in 1946 were service station properties acquired?

A. Yes, we bought new properties for improvement.

Q. Would you state the nature of the properties which were acquired? Were they improved or unimproved sites?

A. The greatest number of them were unimproved sites. I would say 90 per cent of them were vacant properties, involved the purchase of vacant properties, and the balance would involve the purchase of existing service stations.

Q. On the vacant sites that were so acquired did Richfield construct service stations solely?

A. Richfield constructed the improvements at Richfield's expense.

[fol. 2760] Q. When was that expenditure made or the largest part of the expenditure that was approved by that budget?

A. The expenditures started in the latter part of 1946 or early 1947 and have continued to date.

Q. Has the budget appropriation been expended?

A. Not entirely so, no.

Q. Referring to the first column of that page 5 under the title "L-O Stations" will you state whether, notwithstanding the acquisition of service station properties as you have just explained, whether or not the number of Richfield's L-O stations has increased during this 10 to 12-year period.

A. This record discloses that we had fewer L-O service stations in 1950 than we did in 1941, in spite of the expenditure of a very substantial sum of money in this construction program that I have mentioned.

Q. How do you account for that fact, Mr. King?

A. There is a certain fatality in service station properties. We during that period of time lost a considerable number of L-O stations that were made obsolete by street and highway changes, or that had just outlived their economic usefulness. I mean by that, they were no longer profitable operations. And we lost additional stations where we could not renew the leases on them and where the properties were taken for some other use in development.

Q. Turning now to the use to which the L-O service [fol. 2761] stations have been put, in what manner does Richfield select and secure operators for these stations?

A. There are several methods that are used by our merchandising people. As a rule we have a waiting list of applicants for our L-O stations. At other times and in some areas, all depending upon conditions, we advertise for them. Our merchandisers seek for them among the helpers and assistants on service stations, trying to find individuals who are desirous of operating a station on their own.

Q. Do you know what percentage, if any, of Richfield's L-O operators have been independent dealers in their own

stations prior to becoming L-O operators in Richfield stations?

Mr. Dixon: I object to that question, your Honor, as immaterial.

The Court: Overruled.

The Witness: Will you repeat the question, please?

(Question read by the reporter.)

[fol. 2762] A. Well, it is difficult for me to recall, and that we have had few, if any, in answer to your question.

By Mr. Paradise:

Q. In what factors or qualities is Richfield interested in the selection of its operators for service stations?

A. We endeavor to be very careful in our selection of operators. We are looking for men of good character, of stability, because we are turning over a valuable property to them. We inquire into how long they have lived in the community, and their family, and past business connections, and experience. In other words, we try to select people of good character, who are stable, who will be a credit to Richfield in meeting the public.

Mr. Paradise: May I have Government's Exhibit 1-E again?

(The document was handed to counsel.)

By Mr. Paradise:

Q. Calling your attention again to Government's Exhibit 1-E, which is the same Form 542 of service station lease, I call your attention to the fact that this is the form which contains a provision for rentals, immediately following the 24-hour clause. I would like to have you explain, Mr. King, what is the policy in fixing and determining rentals payable to Richfield by Richfield L-O operators.

A. Our policy is to collect a rental of one cent per gallon [fol. 2763] on gasoline sold. There may be conditions or situations where the station may have an additional facility, such as a parking lot or repair building, or something of that sort, for which we will charge an additional rent commensurate with its value.

Q. Are those instances frequent or rare?

A. They are an exception to the rule.

Q. Forgive me for interrupting. Go ahead.

A. I should have added that our policy is to collect one cent per gallon. That is the maximum rental that we attempt to collect. We of course, have exceptions to that, where the rental charged the operator is proportionately less, and in some cases, in order to assist an operator establish a satisfactory gallonage in business, we have in many instances waived the rent, particularly if he is confronted with conditions beyond his control, such as the diversion of traffic due to street changes, or other factors. In fact, we have even reduced the rent that is required in any given case to a nominal sum of $1 a month.

Q. Prior to your appearance here today, we have had testimony of various rental reductions to $1 per month. Will you state whether or not that was the general practice, and, if so, what were the factors that caused it?

A. We would reduce the rent to that figure wherever our operator experienced any difficulty in developing a [fol. 2764] satisfactory volume of business, possibly in order to assist him in establishing a satisfactory volume at a new outlet or account, that had not been in operation before; in other words, whenever it was necessary to assist him in operating the station.

Q. We also have had testimony before you came on the stand today that in instances rentals were thereafter increased, that rentals which theretofore had been decreased to $1 per month were subsequently increased. If you know of instances of that kind, will you state what the reasons were for those increases?

A. We like to establish, or our rents are established on the basis of one cent per gallon, with a certain established minimum per month, such as one cent a gallon at the rate of $100, or $50. In other words, $50 and one cent per gallon would mean the station was producing, say, 5,000 gallons. We may raise that minimum to approach the actual gallonage that the station is pumping, but not so as to increase the rate paid per gallon of one cent.

Q. Now, perhaps I have misunderstood you. Is there any overlapping or duplication? Is the $50 in addition to the one cent a gallon?

A. No, absolutely not. In other words, our maximum rate per gallon is one cent, so that any increases that we make in the flat amounts would not increase that rate per [fol. 2765] gallon.

Q. You have had instances——

The Court: That one cent a gallon is not the margin of profit. It is merely the manner of computing the rent?

The Witness: That is, your Honor, that is only the rent that we get for the use of the premises.

The Court: That is right.

By Mr. Paradise:

Q. We have also had testimony, Mr. King, of instances where the operator was paying, for example, $50 a month with one cent per gallon over 5,000 gallons, and then the rent would have been increased to, for example, $70 and one cent per gallon over 7,000 gallons. What was the reason for requiring a rental change of that sort?

A. Only to facilitate the collection of the rental. In other words, the dealer would pay that amount in advance during the month, or at the first of the month, between the first and the tenth, and it reduced the amount of overage of rent that might have to be collected the following month.

Q. Is the gallonage rental collected at a different time than the flat rental?

A. Yes. The gallonage rental is collected before the 15th or 20th of the following month.

Q. And the flat rental collected when?

A. The minimum rental is due by the 10th of the preceding month, or, I should say, by the 10th of the month. [fol. 2766] Q. Did you feel that collecting a flat rental in advance was of any assistance to the dealer, as well as an assistance to Richfield?

A. Yes, it simplified our collection expense. At the same time it helped the dealer stabilize his own operation, because sometimes operators have to be trained in good bookkeeping and business methods, and if they pay their rent in advance, why, we have found it has helped him in the operation of his station.

Q. Now, has Richfield given these L-O operators at its L-O stations any financial assistance of any sort?

A. Well, I believe we have touched upon our policy to reduce or entirely eliminate the operator's rent, wherever conditions warrant and justify that.

Q. You are speaking now of the rental reductions?

A. The rental reductions.

Q. Are there any other such practices?

A. Yes. We assist—we loan money to our operators, where they do not have sufficient capital to operate the station, and where they are people of good character. We will loan them substantial sums, I know up as high as 2,000 or 2,500 dollars, so that they can carry an adequate inventory and be in a position to do business.

Q. It is correct, is it not, that a service charge is charged by Richfield's credit and accounting department in con- [fol. 2767] nection with those loans?

A. A nominal charge, a flat charge. I believe it is $25.

Q. Do you consider of financial assistance the matter of the facilities furnished by Richfield to the operator?

A. Well, I certainly think you would consider that as a financial assistance in this manner, that many of our stations represent—well, I would say they represent an average investment of probably 25,000 to 35,000 dollars, so that we are turning over a pretty valuable piece of property to this operator, a property that would be far beyond the average individual's ability to acquire otherwise.

Q. Do you have any knowledge of whether or not the maximum one cent per gallon rent that you charge is equivalent to more or less than the fair rental value of that service station?

A. Well, in the great majority of instances the rent that we collect on our leased out service stations does not represent what would be called a fair return on that investment,——

Q. I am not talking about that.

A. —or an adequate rental. As an illustration, I know of properties where they may represent an investment of, say, $35,000 or $40,000, and the rent received might not [fol. 2768] exceed $100 a month.

Q. I wasn't thinking of it so much in the sense of a return on the investment to a person owning capital and expecting a return. I was speaking in the sense of a fair market value from a rental standpoint, as a fully equipped service station.

A. I think that can be simply answered this way, that most of these stations, if we were to put them on the market and lease them, put them out to the highest bidder, we would collect a rental far in excess of what we collect from the average operator.

The Court: Yes, but you couldn't get anybody who would take on an onerous contract like that, which is terminable at will on 24 hour's notice.

The Witness: Possibly you misunderstood me, your Honor. What I mean was this, in trying to answer Mr. Paradise's question as to whether or not the rent we collect is commensurate with the value of the investment. I tried to answer it by saying that if we were to take a certain number of our units, where, for instance, we had no need for them in a certain area, or we desired to liquidate them, we will say, or devote them to other purposes, if we put them on the market to the highest bidder to lease under a long term arrangement, they would bring us a rent far in excess of what we get from that operator.

[fol. 2769] The Court: That is right, but you would lose all the advantages of your control, which you exercise over them, which is almost limitless. You would have to have a contract that would give a fixed term, and you would have to give the man reasonable notice, and if you did not allow him to sublet, you would have to allow him to sell his stock, and you wouldn't be able to come there in the night and tell him to get out at 8:00 o'clock in the morning and say, "We will take only this stock, and take the rest and chuck it into the ocean," which the testimony is you have done in many instances. So it is speculative.

The Witness: Yes.

The Court: I agree with you that if you put it on the market, after you have established a trade, it would have a greater economic value so far as money is concerned, but you wouldn't have the control which you exercise now.

The Witness: That assumes, of course, we wouldn't have the station. I was simply trying to illustrate they would have a greater market value.

The Court: Oh, yes.

The Witness: Or that the rental that we would collect would be far greater than we would have normally received.

The Court: I think this is a good place to stop for a few minutes.

(A short recess was taken.)

By Mr. Paradise:

[fol. 2770] Q. Mr. King, just before the recess I think you had given three instances of assistance given L-O operators, consisting of furnishing the place of doing business, the facilities, the rental reductions and the loaning plan. In connection with those facilities can you tell me is there any instance in which any L-O operator owns either the service station building or the tanks or the pumps or the fixed items of equipment on a Richfield L-O station?

A. There is no instance to my knowledge where an operator has any investment in the fixed assets. His investment is confined entirely to inventory and what we would call small tools.

Q. Do you specify the nature of those tools before he is permitted to take over the station?

A. Yes. We direct the type of equipment. I am speaking of lubrication equipment, tire equipment, etc., that he is to purchase.

Q. Are you familiar with what has been referred to at times in this case as "the subsidy letter"?

A. Yes.

Q. Would you state whether or not that is another type of financial assistance that extended to L-O operators by Richfield?

Mr. Dixon: If the court please, I object to the classification used by counsel as "financial assistance."

[fol. 2771] Mr. Paradise: I will withdraw any classification, then.

Q. Mr. King, I show you Government's Exhibit F, which consists of a series of four mimeographed letters. These particular letters are addressed to Mr. George Bauer who was an L-O operator and who has testified in this case, and ask you if you will state whether those are Richfield forms?

A. These are forms Richfield uses.

Q. Well, those are Richfield forms that Richfield uses, is that correct?

A. Yes, sir.

Q. Now, will you state the purpose to which those forms are used?

Mr. Dixon: Which forms, counsel?

Mr. Paradise: The purpose for which the forms are used.

Mr. Dixon: What exhibits are those, counsel?

Mr. Paradise: That is Exhibit F.

A. Whenever there is a gasoline price war the dealer is confronted with lower prices and in order to assist him to retain his business in the face of lower prices, we will permit the dealer, if he so wishes, to sell at less than our authorized or direct retail price, and if he chooses, we will agree to reimburse him for the amount that he has lowered his price.

Q. Now, Mr. King, you mentioned "dealer". Are you [fol. 2772] referring to the L-O operators or to someone else?

A. I am sorry. I am referring strictly to L-O operators.

The Court: To L-O operators?

The Witness: To L-O operators.

The Court: We have used the word "dealer" but designate the stations other than "L-O operators."

The Witness: Thank you. I understand. It is my mistake. I am referring to L-O operators.

The Court: L-O operators.

By Mr. Paradise:

Q. Prior to the use of a letter of this sort and the issuance of it to a particular L-O operator, can you state what is the normal margin allowed to an L-O operator on gasoline?

A. The normal margin or markup from the wholesale or the tank wagon price is four and four and one-half cents on the two grades of gasoline, that is, the second and the first structure gasoline.

Q. Is it a correct statement that a dealer is permitted to buy our house brand gasoline at four cents under your directed retail price?

A. Yes.

Q. And is it four and one-half cents on ethyl gasoline?

A. Yes.

Q. What is the effect of this letter? During the time [fol. 2773] that this letter is in effect is the dealer's margin guaranteed to him at those same figures that you have just mentioned?

A. The effect of that letter is this: That if it was necessary for him to reduce his price two cents per gallon in order to meet competition, and we authorize him to reduce his price by that amount, that we would then by virtue of that letter subsidize him to the extent of two cents so as to maintain during that period his margin at four and four and one-half cents.

[fol. 2774] Q. Now, Mr. King, turning to a different subject matter, and that is the matter of the termination of L-O operators from their stations.

May I withdraw that, and before I leave those other subject-matters ask you: Will you state whether those matters that you have testified to concerning rental reductions and lending plans and subsidy letters and furnishing of facilities are matters of isolated instances or of general company practices and policies?

A. Those are all general company practices, and have been for a number of years, and are today.

Q. Now, turning to the matter of the termination of L-O operators, will you state under what circumstances and for what reasons L-O operators have been terminated from their tenure in Richfield's L-O stations?

A. As I have previously testified, the operator is instructed by Richfield as to how he shall operate the station. That includes a number of things, such as his maintenance of the property, its cleanliness, his appearance, the products which he will handle and so on, and the manner in which he shall generally operate the station.

Whenever the operator violates any of those instructions, they are called to his attention, not once, but several times in an effort to have him conform to our instructions. When we find an operator who is unwilling to, should I say, [fol. 2775] to co-operate with or to follow our instructions,

after repeated warnings, why, we would consider that ample grounds for the cancellation of his 542.

Q. Do you know of any circumstances when an operator has been terminated for the first infraction of any of those instructions?

A. No, I do not.

I think our practice has been to do everything possible to encourage the operator to follow our procedures, so as to make a more successful operator out of the individual.

Q. Have instructions to that effect been given to the divisions?

A. Generally, yes. However, it is within the discretion of the operating people in the divisions as to when they should exercise their authority to cancel an operator's lease.

Q. At the time of termination of an operator's Form 542 sublease, does Richfield, as a matter of practice and policy, take any action in connection with the distribution of the operator's inventory of petroleum products, or his inventory of tires, batteries, and accessories or his equipment, his movable tools and equipment, that you referred to?

A. It is Richfield's practice and policy to see to it that the outgoing operator sells his inventory, provided it consists of Richfield products and the approved TBA items, [fol. 2776] as well as our approved list of service station equipment, hand tools, and what-have-you, the products and the TBA at the prevailing, current prevailing market price. Now, the equipment at a state rate of amortization or depreciation, which, I believe, is 20 per cent per annum.

Q. Is it correct that that matter pertaining to equipment applies only to equipment that Richfield has approved for use at the station by that operator?

A. Yes. We have approved certain makes and types of lubrication equipment, tire equipment, and so forth, and provided the operator has purchased that equipment, we will see to it that he receives the depreciated value of that equipment, if and when his lease is canceled.

Q. You say that he will receive it. I asked you from whom he will receive it.

A. The general rule—generally, the incoming operator

takes over the inventory and this equipment at the values that I have previously mentioned. If for any reason the station is not maintained in operation, in other words, if an operator is not being immediately checked into the station, then in that case Richfield would credit his account or take the merchandise back.

Q. Is the prospective operator of one of Richfield's L-O stations informed of this practice at or before the time he is permitted to occupy the station?

[fol. 2777] A. Yes.

Mr. Dixon: I object to that, as to the form. He is asking this witness obviously a question which he cannot answer unless he was present at the time every one of the L-O operators was canceled.

The Court: Let's read the question. I think it is——

Mr. Paradise: I can save trouble, your Honor. I will withdraw the question.

The Court: All right.

By Mr. Paradise:

Q. Have you issued instructions, Mr. King, to your subordinates in the marketing division as to whether or not prospective operators be informed of that practice at the time they are installed?

Mr. Dixon: What practice, please?

The Court: Pardon?

Mr. Dixon: What practice, please?

The Court: He is talking about what they have to purchase. Isn't that it? Isn't that what you are talking about?

Mr. Dixon: No, I was talking about the fact that provision will be made to take these things off their hands at the time of their termination, when they move out.

The Court: Provided it is on the approved list.

Mr. Paradise: Yes provided they are approved.

By Mr. Paradise:

Q. In order to straighten it out, what instructions are [fol. 2778] given or have been given to your subordinates in the marketing department concerning statements to be

made to prospective operators concerning the taking over of petroleum products, accessories, and approved equipment?

A. Instructions have been issued to the organization handling our leased out stations to fully explain to prospective operators the basis upon which they purchase the inventory when they go into the station, and the basis upon which they sell that inventory when they leave the station.

Q. Does Richfield have what is known as a training plan or program?

A. With respect to what?

Q. With respect to either merchandisers or L-O operators.

A. Yes, we have.

Q. Will you state when it started, and what it consisted of?

A. We have had training programs in effect since before the war, and with the end of the war, these programs were greatly enhanced and accelerated, and include training schools lasting for some two to four weeks for our merchandisers, all of our merchandising people, together with refresher courses, so that they, in turn, can conduct schools, training schools, for our operators, so as to teach them in our system of service station operation.

[fol. 2779] Q. Were training schools conducted during the war?

A. No. They had to be abandoned during the war because of lack of man-power and other difficulties.

Q. Mr. King, I would like to ask you concerning the tenure in terms of duration in time of these L-O operators. Do you know how many or what percentage of L-O operators—put it this way: How many L-O operators in comparison with the total number of L-O operators have worked in that capacity for a period of, say, in excess of ten years?

A. Some years ago we established the practice of awarding operators a badge or an award for five, ten, fifteen and twenty years of service, so I can pretty well answer your question.

[fol. 2780] Q. Well, Mr. King, let me call your attention to the fact that this case only concerns practices of this corporation, which went into business in March 12th of 1937. Let me reframe the question. How many L-O

operators are there who have been such for a period of five years, do you know?

A. Yes, I do.

Q. How many?

A. Approximately?

Q. Yes.

A. I would say in excess of 20 per cent of our operators have had stations or leased stations from Richfield in excess of five years.

Mr. Dixon: May I interrupt to ask counsel at this time to inquire on voir dire as to the basis of that opinion? Or, if the court please, would you rather have it done on cross examination?

The Court: I do not think it is material. If it is material at all, I do not think it is of any great importance because it is conceded that so long as they obey orders they can stay as long as they want to. If they do not, out they go, and that is all there is to it. That is the pattern and I do not think it is contradicted. I do not think Mr. King would contradict it.

So it does not make any difference how many actually remain. It is just like people who are married, you know. [fol. 2781] Some stay married 30 or 35 years, like myself. Others kick over the traces, you know, in a few years. It just depends how long you want to stay in harness one way or the other. I don't think it means anything.

As I say, I am not trying here the business practices of Richfield Oil Corporation, whether they are good landlords or bad landlords.

I will admit, if you toe to the straight line, why, you can stay there for the rest of your life, and you have evidence of people who have stayed there for years and then violated certain things, and because they would not give in, out they went in 24 hours time. That is the pattern and I do not think it is of very much importance whether a percentage remained with them. We are not interested in that here. They probably could produce their 30 years employees if they tried to, if they went back to their predecessor. I am not interested in that.

Mr. Paradise: On your Honor's statement, I am agreed it is not too material.

The Court: No. Let us confine ourselves.

Mr. Paradise: The only reason of introducing it was on the plaintiff's case there was evidence of a lot of so-called hardship cases, and it appears that those are just isolated instances.

The Court: Well, I call them such merely to indicate [fol. 2782] that in the particular instance the termination was so abrupt, the man was given so little chance to even deal, and men were rejected who had been just as satisfactory to Richfield financially, and financial arrangements were repudiated because they insisted there had been a breach of the conditions. So that is why I talked about hardship cases.

But ultimately it does not make a bit of difference. Perhaps the very hardship of the case lends support to your argument that, after all, you were just as though you owned the station, except you do not assume responsibility for the acts of the operator and he is your employee. You do not pay social security. If somebody is hurt, he is responsible, and a lot of other things that go into different kinds of relationship do not apply.

You call it a "Leasehold which is terminable." It is not a license, it is a leasehold terminable on 24 hours, which is a leasehold. It is not a license.

So, whatever category it is, we will determine later on regardless of common law categories, to see if it is a relationship that makes the imposition of the conditions that you do proper or improper.

Well, at any rate I will allow the statement to remain, but I am merely making the statement to show that it is not of very great importance or to warrant the breaking the cross examination or seeking any great detail. I am not [fol. 2783] interested in any more particular details than that.

As I say, the personalities of the parties are not involved here at all, whether it is Mr. Jones or any of the others. Off the record:

(Short discussion off the record.)

The Court: Let us get back to the record.

Mr. Paradise: Thank you, your Honor.

The Court: All right.

By Mr. Paradise:

Q. Mr. King, referring now to the volume of gasoline, the gallonage sold in L-O stations, do you know whether the average gallonage per L-O station has increased or decreased since the end of the war, and I am speaking of World War II?

A. Yes. Our records will show that the average gallonage of our L-O service stations has increased very substantially since the end of the last war.

Q. Do you know the approximate percentage of increase?

A. Slightly in excess of 50 per cent.

Q. That is all L-O units of Richfield?

A. That is of all L-O stations.

Q. To what do you attribute that increase, what factors?

Mr. Dixon: If the court please, I think that clearly calls for a conclusion of the witness. It is obvious that they have sold, from his statement, apparently twice as much gasoline to the L-O outlets as they did before the war. But [fol. 2784] I think beyond that his explanation for that is of little consequence.

Mr. Paradise: I admit it calls for his conclusion. This man is an expert.

The Court: I beg pardon?

Mr. Paradise: I say, I admit it calls for his conclusion. This man is an expert.

Mr. Dixon: If the court is interested, I will withdraw my objection, but I think it clearly calls for conclusions.

The Court: Oh, in a general way. Gentlemen, I want to make this observation. There is one thing about which I make the observation. As the law of the United States stands at the present time the question of monopoly is determined by whether it exists or does not exist. Whether it is good or bad for the industry, whether it is motivated by good motives on the part of the operator is absolutely immaterial, gentlemen. Those considerations have been excluded from consideration for the last 20 years. And I said so in the Standard Oil case and it is the law everywhere.

We are not interested in the goodness or badness of the monopoly. Judge Hand in the Fashion case is the only

case—I did not know it until somebody made a speech about it—asserted that principle and I reasserted it after 28 years, in the Standard case. In fact these cases used to be tried and the case went up on the record as to whether [fol. 2785] it was good or bad. And then some of us began reading the law and the law is not concerned with whether it is good or bad. That is a question to be directed to the legislature.

For that matter, the Supreme Court has said repeatedly it does not make any difference whether it is advantageous or not. So that all these arguments about the economic impossibility of doing business except on those terms, to which days are being devoted in other cases, I will not allow to be gone into at all because they are no concern of mine. The law is there. I did not pass it. The Republican Congress passed it and the interpretation has been laid down by the courts for 50 years. So I am not concerned with the ethics of monopoly. I am concerned only with the existence of monopoly. So if a practice is there, it is condemned, and the Supreme Court has made an effort not only recently but for 20 years and has so decided.

In the Socony-Vacuum case they said it did not make any difference whether the fixing of prices were at a high or low level or at a minimum, is good or bad for the industry. What they are concerned with is, is it there. And if it is there, it is invalid per se.

Other practices they have said are bad if they result in a restraint of any interstate commerce, and when they mean restraint, it does have that result. Whether it is good for the country or bad for the country is no concern of [fol. 2786] ours.

That has made a lot of this agitation that is going on, and I regret it. Recently—and fortunately the other case is not before me—the Standard Oil Company during the pendency of that case did not write the kind of advertising which is appearing every day in California, talking and referring to this case and saying this is the type of a man the antitrust wants to put out of business. I commend you gentlemen for not publishing that kind of advertising while this case was pending because, if you had, you would have heard from me.

But the entire thing, in the first place, is very improper for a large corporation or anyone to do that kind of agitation through the newspapers.

Even while I was in Seattle—it is a good thing I did not go—I was invited to attend a luncheon, and, if it was not some big officer of the Standard Oil Company was giving that lecture about the antitrust. It would have turned my face red if I had been there. I would have gotten up and walked out or something would have happened, because that case might land in my court too, just as this case landed after two or three years.

So a lot of argument that is going on at the present time is absolutely beside the point. It certainly has no place in this court. I am not interested in the goodness or badness [fol. 2787] of these practices. The only reason why those facts were gone into and the only reason why we call them hardship cases is to point out the kind of control that exists, to show where it begins and where it ends. All we are interested in is to determine whether in view of the type of relationship that exists in these three types of stations the restrictive practices are a burden on interstate commerce or have a tendency to burden interstate commerce. If they are, it does not make any difference that any other practice would land the Richfield Oil Corporation in bankruptcy. It is no concern of mine.

Mr. Paradise: I appreciate your Honor's statement, because I think it gives a chance to orient the materiality of the evidence.

The Court: You know I have said very little up to the present time. The Government's case is in and I can say much more, and we ought to have an understanding and I want to make it absolutely plain, because I have had even economists. They have offered to bring in economists. What do I care for economists? I am just as good an economist as they are. I know what to read and how to read the material that they read.

I am not interested in the economics of monopoly. I am interested in monopoly. Does it exist? Does it not exist? Whether it is good or bad is no concern of mine.

[fol. 2788] Congressman Sherman, when he enacted the law, was concerned with monopoly. The Supreme Court

has interpreted it, the Clayton Act followed it. Then you have the Robinson-Patman Act.

You see, I am living with monopoly and living antitrust, because when I am not on the bench I am writing an opinion on the Robinson-Patman Act. So if there is a case dealing with the subject matter or a law review article I have not read, why, call it to my attention.

So I am living with this thing, and the more I live with it the more am I satisfied that the Congress in the exercise of its plenary power to control commerce may declare what should go into commerce, and having power to declare what should go into commerce, they may prohibit altogether. Whoever can prohibit altogether can regulate almost limitlessly. And therefore because the control of commerce interstate is exclusively within the province of the Congress, anything they consider a burden upon that Congress, such as monopoly, they could regulate. They could even abolish, and the Fifth Amendment does not apply to that.

The Supreme Court has said that even the "due process clause," away back in the Addison case—they said that even the due process clause does not apply to the regulation of interstate commerce, not to the extent that you can just flout it, but that the due process clause in the Fifth [fol. 2789] Amendment which would invalidate interference with contracts has little significance when it comes to commerce, because there you have a plenary power. Under your plenary power, if you interfere with contracts or even abolish them, it is just too bad because the plenary power overrides the right of contract. The Supreme Court started to say that in the Addison Steel case and it has been saying it ever since.

So we have got a piece of legislation that was passed under the broadest power Congress possesses, in a law that has been before the courts for 50 years, when that court has had full opportunity to interpret it. They have laid down the rules. And one of the fundamental rules they have laid down for us is this: That monopoly or monopolistic practices which the Government establishes are forbidden regardless of whether they are good or bad, and it is no excuse, no defense to an action of this character that the practice was beneficial to the public or that the company was compelled to adopt it by economic compulsion.

That is why I was so surprised when I was in New York when I heard that Judge Medina was actually listening to an opening statement in which counsel were showing him that the investment banker, by necessity, is monopolistic, therefore, he ought to take that into consideration. Without any criticism of Judge Medina, because he is a very brilliant judge and will probably be on the Court of Appeals [fol. 2790] in view of Judge Learned Hand's retirement. But, as I view the thing, the inquiry is absolutely unlimited in any case. It may well be that the pleadings in that case are such that the Government opened itself up to that type of inquiry and I did not hear anybody objecting to it, but it came to me as a surprise.

[fol. 2791] So let us have this understanding. You don't have to defend it. It is very well to indicate it, if you desire, for the benefit of the record, so that it would not be a one-sided record, that those practices are hardship cases, in fact, and that as a matter of fact, in the majority of cases the men stay, because they conform. But if, as a matter of fact, the record showed that you had a turnover, a terrific turnover, it would not affect my judgment one way or the other as to what the particular practice is. All I am interested in is to find out whether or not the particular control you exercised is forbidden by the law.

Mr. Paradise: Yes, sir.

The Court: All right.

Mr. Paradise: In order to clarify the type of proof that is coming in, may I make a statement concerning the relevance at this time? Would that be satisfactory?

The Court: You may do that. Remember, I am making this statement merely to give Mr. Dixon warning that by allowing you to go on, I do not intend to open up the record for discussion or argument, and I am not going to allow any persons to go on the stand and show me financial statements showing they were losing money, and were doing this for that reason. I am not interested in that at all.

You see, the business interests of the United States, if they are particularly hurt by a type of litigation, have one [fol. 2792] recourse, to go to the Congress, the way a lot of companies have gone. The Wolverton bill was passed and I think it was vetoed.

Mr. Dixon: It was, but it was passed over the veto.

The Court: There is even a bill up now to exempt baseball from antitrust laws, and insurance companies also. But that is the American way, to go before the Congress and change it, and if that is the case the discussions as to it have no place in this litigation.

Mr. Paradise: Yes.

The Court: As a matter of fact, I have in front of me a series of law suits involving the motion picture industry, and that just shows you that if the government does not do it, someone else does it. The government has left the motion picture industry alone since they got the Paramount decision, but every large theatre in the larger cities is suing for hundreds of thousands of dollars, the companies whom the government has left alone. So I have three of these cases pending now, and other judges have them pending, so at the time the case came up to be set for trial, I said, "Listen, gentlemen, you who operate motion pictures are going to kill the goose that laid the golden egg, because if you make it impossible for these people to produce pictures, you are through. You can't just go out and it isn't like publishing a book, where you can get yourself another [fol. 2793] author he will give you a book. They cannot produce these motion pictures, you are going to be out."

And I said, "If I should declare a free trade in pictures, you are going to lose out, because if I declare a free trade, then anybody can get a picture, regardless, by bidding the money for it." So I suggested that they ought to get together, and that I would act as arbitrator, to see if I could not find some means of establishing a practice that would conform to the law, and at the same time take into consideration the needs of the business.

Now, that is what a judge can do in a case of civil litigation, but in a case of this character, I can do nothing. I can do nothing. I have no power to use my good offices to adjust the matter, and as to the policy of the law, that is no concern of mine and so I have always insisted upon the limitations of our law.

In fact, I gave a lecture at Berkeley in the law school there a year or so ago, which was published in the Pennsylvania Law Review of November of last year entitled, "Limitations of Law and Judicature" and the entire object of that lecture

was to point out how limited we are in our scope, because we live in a country under a government of law, and not a government of men.

Now, if I permit considerations to go into the case which are legislative in character, and have nothing to do with [fol. 2794] the case itself, or considerations of policy, why, I am substituting my judgment for the judgment of the legislative body which enacted the law. That is why we are taught to have nothing to do with the policy of the law. The policy of the law is only material to us when we come to interpret it, in order to see the legislative intent, where we are in doubt as to what the legislative intent was.

In the research I am doing for this other opinion, I ran across a very interesting situation, that some of the things that the courts of the United States have considered a violation of the statute, the English courts have permitted, and the Court of the King's Bench way back in 1910, for instance, held what you call cutthroat competition, undermining the other man's price structure, valid, and which is now forbidden by the Robinson-Patman Act. The English Courts, the way they have interpreted their statutes, have permitted it, and I say that a lot of these questions are a question of policy with which we are not concerned in this case.

With that statement, you may step down now, and I will allow Mr. Paradise to make as elaborate a statement as he wants to, and probably we will clarify our thoughts, and it may be a guide as to the limitations of the testimony that you may desire to offer.

Mr. Paradise: Thank you, your Honor, because I think [fol. 2795] I would like to state first the things that are not involved in this case.

There is not involved in this case any attack on the policy of the law. As your Honor has mentioned, that is not involved. Nor is there involved in this case any question or issue of monopoly.

We are involved with a charge of a restraint of trade under the Sherman Act, and a violation of Section 3 of the Clayton Act.

Your Honor has just mentioned something as to whether or not this is a monopoly.

The Court: Well, I am using the word "monopoly" in the general sense, that the object of the statute, the main purpose of the statute, is to prevent monopolies, by controlling certain practices in restraint of trade.

The Supreme Court has said in one case, and I forget which one it was, I think the insurance case, that the object of the statute is to maintain our economy as a competitive economy. I think it was in the insurance case they made that observation. So when I talk about "monopoly" I merely use that one word to express the scope of the statute.

Mr. Paradise: The underlying purpose of the antitrust laws, we realize, was the protection of the freedom of competition. Section 1 covers restraint, and Section 2 monopoly, and just so we understand each other, I will say there [fol. 2796] is no charge of a violation of Section 2 of the Sherman Act.

The Court: I understand.

Mr. Paradise: And I think that is what Mr. Justice Frankfurter had in mind in the Standard case, when he commented that these were independent businessmen, because they had certain exclusive dealing contracts at independent service stations between Standard in that case and the independent dealers at the Chevron stations. He said if, on the other hand, these were not independent service station dealers, and these stations were acquired by Standard either by purchase, or ownership, or he mentioned agency or employment, he said we might have a problem of monopoly under Section 2 of the Sherman Act, but that is not involved here. And I must point out that is not involved in this case either.

We are not by this testimony asserting any matters relevant to benefit to the public. We fully recognize that the law is established that that is no defense either to a charge of monopoly, nor is it relevant to a charge of restraint of trade.

However, the matter of a defendant's intentions is relevant, both in a monopoly case, as well as in a restraint of trade case, and I think that is made abundantly clear, at least as recently as the Columbia Steel case, which is

[fol. 2797] the latest pronouncement on the Sherman Act, of which I am aware.

It seems to me that is most appropriate to the subject-matter that Mr. King has just been testifying to. The question arose there whether it was a violation of Section 1, and I believe also of Section 2 of the Sherman Act, both the question of restraint, as well as the question of monopoly, by the acquisition by United States Steel of the Consolidated Steel out here, and there was that problem of vertical integration, which your Honor mentioned earlier.

One of the chief problems involved in that case, and considered by the Supreme Court was the question of the intention of the acquisition. It was pointed out that Columbia Steel Company had acquired the Geneva Steel plant with at least the approval of the United States government. I believe the testimony in that case was that the United States Steel Company had been invited to bid on the plant by the Defense Supplies Corporation. Here we have enlarged our refining capacity very much during the war at the request of the government.

The Court: I will say this: That, as a matter of fact, I think in the Columbia Steel case the very fact that a law had to be passed as a result of it shows it was not a popular decision. It certainly has been subject to very much criticism on the part of law writers, and everybody else. The strength of the case and the problem of chief consideration was this, that there was an invitation to bid, and they [fol. 2798] thought because you invited a person to bid on a plant, and you had practically the tacit approval of the Department, that the bid would be all right, only to find afterwards that somebody was prodding that they go on. That is why the Attorney General was in such a bad position, because the same Attorney General who sought to defend the Act was the Attorney General that was consulted in advance about the bidding. So I think the Columbia Steel decision is a decision of very small scope, and that argument certainly cannot be applied. I said so in the supplement I wrote to my opinion, that the argument cannot be applied. Being invited to bid to acquire property that was for sale in the open market, being invited by the government, and then being sued by the government is an entirely different proposition than merely creating, or, rather, en-

couraging enlarged facilities on the part of private industry, without government capital, as they did as to others. It is not like the aviation industry, where the government put up the capital and bought the buildings, and then attempted to lease them, and then even underwrote 80 per cent of the contracts at the bank. I used to say in some of these cases during the war that Mr. Douglas probably didn't own the desk at which he was sitting, because if he looked at it he would find a stamp "United States Army" or "United States Navy" on it.

We are not dealing with that kind of a proposition. We [fol. 2799] are dealing with a situation where I have allowed you to show it, and where you merely show that you had to expand, or that you had to find outlets because you had enlarged your facilities, and you wanted a market. That is an entirely different proposition than the proposition in the Columbia Steel case.

Mr. Paradise: Yes, but the purpose of the testimony, however, your Honor, was that it was not a monopolistic enlargement, but it was a defensive measure. It was a device to continue to wage competition.

That was the reason for the creation of the L-O unit. Now, as to the particular type of testimony——

The Court: There is no objection to that testimony being in there. I want to give you this: I am not going to let Mr. Justice Frankfurter tie me to a label to satisfy some of those who have talked about the tyranny of labels. So I am not going to take that negative phrase that he put in, if they were independent businessmen, and others were to put an absolutistic designation of special character, so that if you have a relationship that is akin to it, but cannot be called independent businessmen, that the practices may not be in restraint of trade as to those. He was talking about the peculiar, particular things. Furthermore, he was not talking about the Sherman Act, because he never got that far, so that his use of that phrase is merely descriptive. [fol. 2800] It does not say that he has to be what I would call an independent businessman.

In other words, I don't want to have the words, or I do not feel bound by that designation any more than you say you do not want to be bound by the designation of "inde-

pendent contractor" as that term is used in the law on contracts.

In other words, we are realists, both of us, and we have to determine what relationship exists, remembering, however, that in talking law and questioning relationships, we have in mind certain categories which are established in the particular law. Maybe I have got into another twilight zone. Maybe you have created a twilight zone. Maybe you have created a relationship which is not employer and employee, or lessor and lessee, or independent contractor, and yet is nameless, as I started to say.

Then I would have to determine, as we do in applying the rent control law, the theory of the dominant characteristics, and whether you determine a thing is an apartment house or not, or a hotel or not, whether the characteristics of one relationship with the other are more dominant than the other; it may well be before we get through we will have that kind of a problem. So, you see, if viewed under the "tyranny of labels", I don't want to let that lie. That sounds more like Pound, or maybe Llewellyn, some one of the new men, "the tyranny of labels."

[fol. 2801] Mr. Paradise: I agree with your Honor's last statement. But your Honor realizes we have a very different issue and a very different problem involved here than involved in the Standard Oil Company case. In the Standard Oil Company case, as I mentioned at the outset, there was an acknowledgment of independent businessmen, and at the conclusion of this case I would like the privilege of pointing to all the admissions of the Standard Oil Company, to show that that was a fact.

Here we have a question of, as your Honor has pointed out, what is your relationship? Now, I don't think we have to name it, and the reason I don't think we have to name it is that it isn't important what label you give to it. What is important is the framework in which we consider this problem.

The problem, considered from the standpoint of the antitrust laws, must be considered from the standpoint of whether or not it is a subject-matter of competition. The government knows that that is an essential factor, because they have said that this is a market which, they said, we

foreclosed, that is, Richfield has foreclosed this market from its competitors.

The Court: That is right.

Mr. Paradise: Our proof will show that is not a market and it never was a market, and the reason for it is, and I [fol. 2802] want your Honor to appreciate it, the reason is not only because we own the stations. The ownership is one of the factors, but I think there is a bundle of factors that enters into the reason why this is not a market, and therefore, is beyond the scope of the antitrust laws, and this fact is included in our purpose in acquiring the outlet.

Our ownership, we admit, is one of the factors, but not the sole one. The fact that when he goes in he knows he is in there for the purpose of handling these products, and he knows we have a short term cancellation for the purpose of implementing and enforcing the principles, as it is expressed; the fact that we give certain benefits to the man in the nature of this rental reduction, and the subsidy letter, where we guarantee him a margin; and the fact that we do not permit him to display his merchandise in a way we don't like, and various other aspects, in the presence of which there cannot be any such relation as independent businessman.

Now, I hope I am not taking the court's time too long, but I would like to add a few more thoughts.

The Court: We will adjourn as soon as you finish, but I will let you make your full statement, because I made a full statement, and I understand your position.

Mr. Paradise: I think the government is fully aware of the fact that a necessary corollary of its proof requires a [fol. 2803] showing of a market, and unless there is a market, it cannot be foreclosed. In other words, those are parts of the same equation, unless there is a market there is no violation of either the Sherman or the Clayton Act, and a necessary factor in the problem is whether or not this man is an independent businessman.

Now, it has been well stated that these are the factors, and I will cite this to your Honor at the conclusion of the trial, that these are the factors in determining whether a man is an independent businessman:

That he has a right to buy in a competitive market and

deal with several companies, as he so desires. We submit that is not done.

That he has a right to select his own products and equipment. That is not done.

That he has the right to determine his own sales policy.

That he has a right to determine his own need of advertising.

That he has the right to determine the manner of the display of his products.

That the good will of his business is transferable at his pleasure and at a consideration satisfactory to him, and that the continuation of his business is not dependent on the will of another.

We say that those factors are cumulative, and that these [fol. 2804] men have none of these attributes.

Therefore, I say it is unimportant whether you call this man an agent, an employee, or what you would call him. We are considering whether this is a market and whether he is an independent businessman, and we say this is not a market, and if it is not a market, it cannot affect competition.

Now, the precise question to which Mr. Dixon's last objection was raised didn't relate to this overall problem.

The Court: No, but it has given us a good chance to discuss it.

Mr. Paradise: And now we are getting back to a specific thing.

The Court: As I said, I didn't sustain the objection, and I told him why, and it merely has enabled us to discuss this matter.

I think I understand your position very clearly, but I wanted to get back at this point that ultimately we come back to the language which you quoted right in your opening statement from Mr. Justice Douglas, that ultimately the question cannot be decided by technical designations which lawyers have adopted, and that applies to any kind of relationship, whether you call it employer and employee, or independent contractor, or del credere agent, because, after all, the words "del credere agent" may sound ominous, but all they mean is a factor who guarantees the account and is [fol. 2805] held responsible for it, which is a del credere factor.

In the last analysis, in each of these cases we have to determine what the relationship is. If they are mere agents, and with no more status than an employee, well, then one conclusion is arrived at if they are not, or if, by reason of their position, regardless of the contracts that you made them sign, they would have certain rights by the particular contracts, but then the question arises whether these very contracts are not the ones that will cause the restraint in a field in which you have no right.

Mr. Paradise: Yes.

The Court: Because if that were true, you will remember that under the second one they allege it is the contracts which result in the monopoly. So the government does not solve it so simply, but they say that these particular contracts tie it down, and that is the very objection of the government, and that is where the Clayton Act comes in.

Mr. Paradise: May I add a few words concerning that?

The Court: Yes.

Mr. Paradise: I think it is the theory of the government, and I think it can be demonstrated to be fallacious, that one of the factors of the alleged violation here involved is the factor of control. I say that must be fallacious for this reason that: Is control ever more present or present to a greater degree than a master-servant or employer-[fol. 2806] employee relationship? And yet in those cases, as your Honor pointed out, in the Standard Oil Company case, there is no question of violation of the antitrust laws. The control is admitted. The control does not make it a violation. There is no market.

The Court: I made that statement, but Mr. Dixon never conceded that. He never conceded it in the trial, and I remember at one time John Hall got up and pointed to him and said, "Aren't you willing to concede that we own those stations and we have certain rights?" He said, "I am not ready to concede it." He said, "I am not ready to concede it. We will get to those later. We are concerned with those that you don't own." Isn't that correct?

Mr. Dixon: Correct, your Honor.

The Court: But I will say this, however, that I am starting with the premise, that is, that we are trying this law suit at the present time with the premise that an employer-employee relationship would determine the type of control

you are claiming here as to your exclusive supply contracts. We will start with that. But I am not bound by the theory of the government. Even in the Standard Oil Company case I didn't sustain some of their theory. They wanted a declaration that the restrictive contracts were invalid per se, and I didn't go that far. I merely held they were invalid if they resulted in restraint, that they are not invalid per se.

[fol. 2807] Mr. Paradise: May I mention one more word before I close, your Honor?

The Court: Yes.

Mr. Paradise: I don't think this would cover more than a couple of paragraphs.

Your Honor mentioned that it may be necessary at the conclusion of this case to determine what is this relationship by its dominant characteristics, or what it is defined, or to call it something.

I don't think that is necessary, and I would like to state that quite simply. I think once you have several relationships present at the same time, and here we have a lease and this, called a lease, and at the same time we sell this man products. We could have him in there both as a lessee and also as an employee, or agent, and, actually, if I were in it, if instead of Richfield it was myself personally, and the man also might have another relationship, he might also be my cousin, but none of those factors is important.

The factor that I think we are looking at in this case is the realistic one, the economic realistic one, as to whether, under all of these circumstances, this is a market, and if it is not a market, and if the man is not an independent businessman, the antitrust laws do not apply.

The Court: All right. I think this is a good place to stop. I think we understand one another.

[fols. 2808-2811] Now we will listen to evidence for about another week before we indulge in a talk fest, such we have indulged in this afternoon.

10:00 o'clock tomorrow morning.

(Whereupon, at 5:10 o'clock p. m., Thursday, May 24, 1951, an adjournment was taken until 10:00 o'clock a. m., Friday, May 25, 1951.)

[fol. 2812] Friday, May 25, 1951. 10:00 A. M.

The Court: All right, gentlemen.

Mr. Paradise: Mr. King, will you resume the stand, please?

WILLIAM G. KING (Recalled)

Direct examination (Resumed).

By Mr. Paradise:

Before I proceed in the topic at which we left this matter yesterday, Mr. King, I would like to call your attention to a matter of your testimony yesterday afternoon. You were asked the question whether a service charge was charged by Richfield's credit and accounting department in connection with loans to L-O operators. And your answer was, and I quote:

"A nominal charge, a flat charge. I believe it is $25."

Mr. King, was that answer precisely correct?

A. No. I have since found that it is not. That was a charge that we made some few years ago. That charge has since been increased to a flat amount of $50. It works in this manner: If the dealer leaves us——

Q. You are referring to the L-O operator?

A. If the operator leaves the station prior to the time that amount has been amortized at the rate of seven per [fol. 2813] cent per annum, the balance is then returned to him. Othe.wise that is the maximum amount that he pays or charge that he pays for the loan.

Q. You mean there are circumstances where a refund is made to him out of that advance charge?

A. Well, for example, if we loaned him a thousand dollars, interest at seven per cent for one year would be $70. If he left the station at the end of six months, he would have a refund of $15 coming to him.

Q. Is that Richfield's practice?

A. That is Richfield's practice.

Q. Now, I think at yesterday's recess there was an un-

answered question. I had asked you concerning—I will repeat the question to you, Mr. King. It was this:

> "Mr. King, referring now to the volume of gasoline, the gallonage sold in L-O stations, do you know whether the average gallonage per L-O station has increased or decreased since the end of the war, and I am speaking of World War II?"

and your answer was, and I quote:

> "Yes. Our records will show that the average gallonage of our L-O service stations has increased very substantially since the end of the last war."

I asked you whether you knew the approximate percentage of increase, and your answer was:

[fol. 2814] "Slightly in excess of 50 per cent."

I asked you if that was all L-O units of Richfield, and I intended to state, "on an average," and your answer was:

> "That is of all L-O stations."

Did you mean on an average basis?

A. Yes, that is the average of all L-O stations that I was referring to.

Q. Do you know, Mr. King, what the average gallonage in an L-O station was as of the end of World War II, stated in terms of gallonage, approximately?

A. It was approximately sixty-seven or sixty-eight hundred gallons.

Q. Do you know the approximate gallonage of L-O stations on an average basis as of the present time?

A. Last year or 1950 I believe the average was approximately 10,300 gallons.

Q. I see. I then asked you the question:

> "To what do you attribute that increase, what factors?"

and Mr. Dixon raised an objection, which, your Honor, has not been ruled upon.

The Court: Read the question again.

Mr. Paradise: That appears on page 1720, your Honor.

The Court: In view of what I said yesterday, I will [fol. 2815] sustain the objection, not merely on lack of foundation, but absolutely as irrelevant because, if I allowed that, then we would have to go into accountancy and economics and try to account for the increase, when they are entering into a domain which is beyond the scope of inquiry in this particular case for the reason I indicated in the very elaborate discussion in which we indulged last night.

Mr. Paradise: In the discussion we had last night, your Honor, it concerned the question of over-all economic benefits or detriments. The relevance of this particular question does not pertain to that at all, which, as I mentioned yesterday afternoon, I recognize and acknowledge fully is not relevant in a case of this sort.

I would like to call the court's attention to the fact that the Government as a part of its case asked its L-O operators uniformly whether there was an increase of gallonage at those respective stations, and attempted to bring out through the testimony of those L-O operators that that increase was due to their personal efforts.

I anticipate, unless counsel for the Government tells me that that is not correct, that they are going to use that as the basis for an argument and part of their contention that that will be an element in their contention that those men were independent businessmen.

The Court: Let us assume that your interpretation is correct, nevertheless, you cannot counteract specific evi- [fol. 2816] dence of an increase by general evidence, except insofar as you may show, as you already have, that there was an increase. And that, you asked without objection. You said: "Do you know the approximate percentage of increase?" The answer: "Slightly in excess of 50 per cent." That statements shows an increase.

But assuming that there is evidence in the record of which it can be claimed that the increase is due to individual effort, although I frankly do not remember any such evidence, except in one or two instances I asked the man how he got the gallonage and he said he worked very hard to work it up, as it was so low when he got it. Then only spe-

cific evidence would counter that. A general statement of a man who sits in an office and studies there about what was the cause of the increase would not overcome the impact of specific instances.

[fol. 2817] Mr. Paradise: Well, if the purpose of the government's testimony was for the purpose of making an argument that there is an inference of independent businessman relationship because of particular efforts, it is the purpose of this testimony to refute that and to show that the increase was due to other factors.

The Court: I do not know that that is the purpose of the government's testimony, and the purpose is not an ingredient which determines materiality. That is in the record, and if you want to contradict it, you may contradict it, but so long as these men did not go into detail, except in one or two instances where it was made evident that a man had taken a run-down station and worked it up, I don't think we should go into that in detail. If that were true, we are in the realm of economics, and the government may introduce experts to analyze the entire industry and try to contradict it, so we are not going to go into that. The objection is sustained.

By Mr. Paradise:

Q. Mr. King, my questions up until now have related to the L-O stations, with the exception of the questions that I have asked you concerning the organizational set-up of the home and division offices, and the duties of the salesmen and merchandisers, respectively. I turn now to a different topic, and that is the dealer stations. Now, we have had [fol. 2818] testimony in this case that there are two types of dealer stations with which Richfield has written contracts. One we have referred to as the 337 type of transaction, and the other the 3-C type of transaction.

Now, you have referred in your prior testimony to independent service station dealers, and for the purpose of reference, will you tell me what persons you are talking about?

A. These independent service station dealers?

Q. Yes.

A. I am talking about those dealers who either own their place of business or lease it from others.

Q. Does that include any persons, such as L-O operators, who may lease stations from Richfield?

A. No, that excludes them. In other words, they would lease it from others than Richfield, of course.

Q. Now, does Richfield make written contracts with any of such persons, whom you have called independent service station dealers, on any basis other than the 3-C transaction or the 337 transaction?

A. No, sir.

Q. What factors determine which of those two types of deals is offered by Richfield to independent service station dealers?

A. The competition that we encounter when we solicit the business of a particular dealer.

Q. Will you describe the nature of that competition, and [fol. 2819] how that affects this problem as to which transaction is used?

A. Well, competition may and does include everything from discounts below the posted price, to the loan of service station equipment, to the loan of money, to propositions involving repairs or improvements to the dealer's place of business. Where one of those items is encountered, we endeavor to secure the business on the basis of our 337 contract, but where we have to make some investment in the service station in order to meet competition and to acquire the business, then we endeavor to negotiate it on the basis of our 3-C proposition.

Q. Now, confining our questions for the time being to the 337 type of transaction, what documents does Richfield sign with the independent service station covering the sale of products?

A. We sign only the 337 covering the sale of products.

Q. Mr. King, I call your attention to Government's Exhibit 5-D, which is entitled, "Richfield Oil Corporation Sales Contract, Form 337," with a print date of 8-48, and ask you if that is the instrument to which you just referred.

A. It is.

Q. Now, are there any other written instruments executed with the 337 dealer between Richfield and that dealer?

A. In the event that the dealer wants the station painted [fol. 2820] in Richfield colors, then we enter into a paint agreement.

Q. Mr. King, I show you Government's Exhibit No. 5-E, entitled, "Painting Agreement," Form 59, with a print date of 8-48, and ask you if that is the instrument you refer to as the painting agreement that is sometimes entered into with the 337 dealers?

A. It is.

Q. Now, calling your attention to the sales contract, Exhibit No. 5-D, is the nature of the dealer's obligation to buy petroleum products from Richfield fully expressed in that contract?

A. Yes, this contract calls for the dealer buying and Richfield selling a minimum quantity of gasolines, lubricating oils, and greases, and with a maximum established, limiting the maximum amount of those products that Richfield is obligated to supply in the event the dealer desires to buy in excess of the minimum, as stated in the contract.

Q. What do you understand to be the dealer's obligation under that contract?

A. His obligation is limited to the purchase of the minimum quantities as established in the contract.

Q. Now, has Richfield made any agreement with any dealer, any 337 dealer, either under that form of contract, or any prior issue of that Form 337, or any agreement, oral [fol. 2821] or written, under which the dealer agreed or obligated himself to purchase gasoline or lubricating oil or grease in excess of the specified quantities set forth in that 337 form of contract?

A. No, sir.

Q. When you testified earlier in this case as a witness called by the government, you mentioned some instructions which were given in 1948, I believe you said, concerning the manner in which the quantities were to be filled in in that form of contract. Will you state, Mr. King, when those instructions were given, and what those instructions consisted of.

A. I believe it was on or about August of 1948 that, on advice of our legal department, following Judge Yankwich's decision in the Standard Oil case, that I issued in-

structions to our organization that in negotiating a 337 contract, the minimum quantity of gasoline inserted in the contract could not exceed 85 per cent of the dealer's known past sales. Subsequently, and I believe early in 1950, those instructions were changed to provide that the minimum quantity of gasoline could not exceed 75 per cent of the dealer's known sales.

Q. Now, prior to August of 1948, had any instructions been issued to the personnel in the marketing department, that is to say, the salesmen, the sales end of it, as distinguished from the merchandisers, who had nothing to do with this,—had any instructions been issued to your sales [fol. 2822] personnel concerning the manner in which the quantities were to be inserted in sales contracts, and I am speaking of this 337 form?

A. Well, prior to 1948 our instructions to our representatives were to insert a quantity of gasoline in the contracts, a figure that was reached by mutual agreement between the dealer and our representative.

Q. You mentioned that the painting agreement, this Exhibit 5—what is it—5-F?

A. 5-E.

Q. —that the painting agreement, 5-E, is sometimes used with the sales contract. Will you state whether or not it is always used with the sales contract?

A. In answer to your question, no, the painting agreement is not used every time we enter into a 337 contract. It is only when the dealer desires that the station be painted, in which event the paint contract is negotiated.

Q. Now, Mr. King, I call your attention to page 28 of Government's Exhibit 26-A, and that page contains data which Richfield furnished to the government in response to a subpoena duces tecum, and which data has been stipulated to be true for the purposes of this case.

On that page, Mr. King, there appear several columns of figures, with explanatory notes as to the significance of the various columns. It appears that the fourth column [fol. 2823] represents the total number of 337 contracts as of the end of each of the yearly periods referred to in the most left-hand column. From the explanatory note it appears that the first column of figures represents—let's take

the figures for the year 1950, and the explanatory note referring to column 1 indicates that there were 267 337 sales contracts in effect as of the end of 1950, without any accompanying paint agreement at all.

The next column, under No. 2, has the figure 853, and the explanatory note No. 2 indicates that that reflects the total number of 337 sales contracts in effect as of that date, which were accompanied by painting agreements signed concurrently with the 337 sales contracts.

The third column, where the figure 241 appears, is explained by footnote 3, and it appears from that footnote that that figure is the total number of 337 sales contracts in effect as of that date where a painting agreement was issued subsequent to the execution of the sales contract.

Will you explain, Mr. King, the circumstances under which sales contracts are made without any accompanying painting agreement at all, either at the time of the sales contract or at a subsequent time, which would explain the 267 337 sales contracts appearing in column No. 1.

[fol. 2824] A. Painting of the service stations, as you know, is a practice that has been developed by competition. And generally speaking, when a dealer decides to buy your product he wants his station painted in the identifying colors of his supplier for advertising value and for the preservation and maintenance of his place of business. In some cases the dealer demands more paint than we feel that we can furnish. In other words, the cost of paint is, in our opinion, excessive in relation to the volume or the amount of products he may purchase from us. In such cases we either reduce, or we reduce the amount of painting we will do to a figure that is satisfactory to us and to the dealer, or else maybe no painting is agreed upon and the station may remain unpainted. Sometimes the station is possibly a place of business like maybe a garage or a combination garage and service station, where the facilities do not lend themselves to this painting. There could be other circumstances where our sales contract has expired, and the station has previously been painted and the dealer is satisfied with the appearance of the station and he does not demand any more paint, so there is no paint contract considered.

Q. The explanation, then, for column No. 1, do I understand from your statement that those are stations which may or may not have been painted in Richfield colors at a prior time?

[fol. 2825] A. Yes.

Q. The column No. 2 represents a number of sales contracts, 337 sales contracts, when a painting agreement was executed concurrently with it. It is so explained in the foot-note. The third column indicates that, as of December 31, 1950, there were 241 of these sales contracts on form 337 where there was no painting agreement entered into at the time the sales contract was made but a painting agreement was entered into at a subsequent time. Will you explain the circumstances that bring that about?

A. Well, it is quite possible that the station may have been previously painted in Richfield colors. We renewed the sales contract with the dealer but he did not desire additional or a new paint job, as we could call it, until some later date, and at which time when he did want it, why, we were agreeable to doing the work necessary.

Q. Has Richfield required that dealers enter into painting agreements as a condition to Richfield making a sales contract with the dealers?

A. No. The painting agreement, entering into a paint agreement is not a requirement concurrently with entering into a sales contract.

Q. Has Richfield required that these independent dealers have their stations painted in Richfield colors as a condition to Richfield's willingness to sell gasoline to them under [fol. 2826] a 337 sales contract?

A. No, that is not a requirement.

Q. Mr. King, will you refer to the painting agreement form that you have before you? Referring to Government's Exhibit 5-E, Mr. King, paragraph 2 provides:

> "That Richfield shall paint the aforesaid service station buildings at the above location and furnish the necessary work, labor and material therefor at a cost of not less than $——— nor exceeding $———."

The following paragraph provides:

"That the dealer"——

and I won't read all the language, but it provides that the dealer under certain stated circumstances will repay to Richfield the actual sum expended by Richfield under paragraph 2, "not exceeding, however, the maximum price therein set forth," stated in that paragraph, "together with a reasonable sum as attorney's fees in the event suit is instituted by Richfield to collect said sum, or any part thereof." Will you tell me what is Richfield's purpose in providing in the painting agreement for reimbursement for the painting cost under any of the circumstances referred to in that paragraph? And I ask you to read the paragraph to refresh your recollection as to the circumstances under which the dealer may be required to pay the painting cost?

[fol. 2827] A. The paint contract is to protect our investment in the cost or in the money that we have expended to paint this dealer's station. The average station costs anywhere from five or six hundred up as high as $1,200 or $1,500 to paint. All and all the aggregate reqresents a very sizable expenditure on the part of Richfield. In the event the dealer should break his contract to purchase the fixed quantity of gasoline that he has agreed to or, in other words, if he stops buying our gasoline, this contract gives us the right to collect for the cost of the paint job.

Q. The form 337 sales contract that you have before you also provides, I believe, for a right on the part of the dealer to terminate the contract at any time on 30 days notice. I will state that it is my understanding of paragraph 3 of the painting agreement that if the dealer terminates on 30 days notice before the expiration, that Richfield also under the painting agreement has a right to collect under the painting agreement?

A. Yes. If the dealer exercises his termination notice and ceases to purchase our products, then under our paint contract we would have the right to collect for the expense of painting.

Q. Is it Richfield's purpose to collect the painting cost if the dealer purchases the quantity of gasoline which he has agreed to purchase under the contract?

[fol. 2828] A. No. If the dealer fulfills the terms of the contract, why, we consider our paint costs have then been amortized.

Q. Paragraph 1 of the painting agreement form that you have before you reads as follows—this is one of the agreements by the dealer—

> "That dealer shall remove from the surface of the service station which is to be painted all signs, insignia, and obstructions, so that the obligations of Richfield hereunder may be performed with a minimum of hindrance."

Do you know the purpose of that clause? Or, I have forgotten whether you were asked that question by Mr. Dixon originally.

A. I believe I was, and I replied at that time that I did not know the purpose of the clause.

Q. Mr. King, calling your attention to that paragraph 1 of the painting agreement, Government's Exhibit 5-E, will you tell me what has been Richfield's practice with respect to any discussions or suggestions with the dealers—and I am talking about independent dealers operating under 337 sales contracts—concerning the display of competitive signs of the nature of Lube Oil signs, for example, or tires?

A. Well, the display, it is entirely at the discretion and it is the privilege of the independent dealer to display [fol. 2829] any signs that he elects. Richfield simply, as a supplier of certain quantity of his petroleum products, does not attempt to exercise any direction or control over the signs that he may or may not display.

Q. This paragraph does say that the dealer shall remove from the service station all signs, insignia, and obstructions. Does that have reference to curb signs or lubricating oil signs of that nature?

A. Oh, no. This would only be——

Q. To what signs would this refer?

A. This would refer only to signs that are attached to the surfaces that we must paint.

Q. And what surfaces are those?

A. That would be the walls of the service station building, the canopy, the restroom facilities, the structure itself.

Q. Is any painting accomplished on the area of the service station ground itself, the blacktop or asphalted area?

A. Oh, no, no.

Q. To your knowledge are competitive signs generally displayed in 337 dealer stations?

A. Yes, I would say that the vast majority of our 337 accounts display competitive signs of some description.

Q. Under what circumstances, Mr. King, has Richfield [fol. 2830] sought collection under these painting agreements?

A. Only where the dealer has cancelled the contract prior to its expiration or has ceased buying our products.

Q. Has Richfield ever attempted to collect on the painting agreement in any situation where the 337 dealer purchased from Richfield the quantities of gasoline specified in the sales contract or failed to purchase from Richfield the quantities of lubricating oil or grease specified in the sales contract?

A. No, sir.

Q. I will ask you the same question relating to a situation where the dealer has purchased from Richfield the quantities of gasoline specified in the sales contract and, at the same time, has purchased competitive grades or brands of lubricating oils or greases such as Pennzoil, Quaker State, MacMillan or any other? If my question was not clear, the question related to: Has Richfield ever attempted to collect on a painting agreement in any such situation?

A. No, sir.

Q. Has Richfield ever attempted to collect on the painting agreement in any situation where the dealer—I am speaking of 337 dealer. I want you to bear that in mind here on all these questions—where the 337 dealer has purchased from Richfield the quantities of gasoline specified in the sales contract and has also purchased, at the same [fol. 2831] time, additional quantities of gasoline from one of Richfield's competitors?

A. No, sir.

Q. Has that situation arisen, to your knowledge, within the past 10 years where a dealer has installed in one or more pumps in his service station the gasoline of another

supplier and, at the same time, wanted to continue to buy Richfield gasoline?

A. I can't recall any such situation as you describe. Our experience has been that when a dealer has decided to no longer handle our gasoline, that he just stops buying our products entirely. We are through.

Q. Do these forms that you have before you, Government's Exhibit 5-E and 5-F, respectively, that is, the sales contract on form 337 and the painting agreement on form 59, constitute the entire agreement between Richfield and the 337 dealer, excepting, of course, in those instances where no painting agreement is made with the dealer?

A. Sales contract 337 and the paint contract are the only agreements that we use with the 337 class of dealer.

Q. Other than those written agreements has Richfield made any oral contract or agreement or understanding with any 337 dealers?

A. No, sir.

Q. Has Richfield made any oral contract, agreement or [fol. 2832] understanding with any 337 dealer by which the 337 dealer has agreed to restrict the brands of petroleum products handled by him to those brands designated or approved by Richfield?

A. No, sir.

Q. Has Richfield made a written contract with any 337 dealer pertaining to the sale of automotive accessories?

A. No, sir.

Mr. Paradise: I believe it is stipulated, is it not, counsel, that Richfield has made some direct sales to a few number of service stations? I have forgotten the particulars.

Mr. Dixon: You mean 337's?

Mr. Paradise: Yes.

Mr. Dixon: Yes.

Mr. Paradise: I have forgotten. Does that pertain to 337? I will have to check that statement. I know it refers to direct sales to service stations, but I do not know the type of service stations. I will check that during the noon recess. I am informed that it refers only to the L-O type, but I will also ascertain to make sure that that is a true statement.

Q. Has Richfield made any oral contract, agreement or understanding with any 337 dealer by which the dealer has agreed to restrict the automotive accessories handled by him to the brands designated approved by Richfield?

[fol. 2833] Mr. Dixon: Is that written contract?

Mr. Paradise: Here, I asked for oral. He said he had no written contracts before.

Mr. Dixon: I do not think the question is quite proper.

The Court: I beg pardon. I do not think he should be asked such a leading question. How would he know the oral contracts made if there are some made?

By Mr. Paradise:

Q. Do you have any knowledge of any? Has it ever been reported to you?

The Court: Yes, that is better.

The Witness: Repeat your whole question.

By Mr. Paradise:

Q. Oral contract, agreement or understanding between Richfield and any 337 dealer by which the dealer has agreed to restrict the automotive accessories handled by him to brands designated or approved by Richfield?

A. I have no knowledge of any such arrangement, oral or written.

Q. Do you have knowledge of any or has there ever been reported to you any oral contract, agreement or understanding with any 337 dealer by which the 337 dealer has agreed to acquire from sources designated by Richfield all or any of the automotive accessories sold at his service station?

A. I do not know of any.

Q. Have you given any instructions as to whether or not any such oral contracts, agreements or understandings may [fol. 2834] or may not be made by your subordinates

A. I have issued instructions that no oral agreements are to be made, and that the entire agreement between Richfield and customer must be represented by our customary contracts provided for that purpose.

Q. Are those the instructions that you referred to yes-

terday in connection with these charts of authorized signatures?

A. Yes, sir.

Q. What contact does Richfield have with the 337 dealer after the sales contract on this form 337 has been signed?

A. Our salesman who negotiated the contract continues to contact that customer to retain his goodwill and his business, and in addition to that, our tank truck driver who delivers products is also a contactor for that individual.

The Court: You have reached a stopping point. Do you want to recess now while you are looking at your papers?

Mr. Paradise: Yes, that would be fine, your Honor.

The Court: Gentlemen, I have been taking some of the papers under consideration. What is the citation of the Columbia case? I do not have it handy just now.

Mr. Dixon: I believe it is 337, Judge.

The Court: What?

Mr. Dixon: I believe it is in 337. If I had my black book [fol. 2835] here I could tell you.

The Court: No, it is not 337. I have 337. I thought it was there, too.

Mr. Paradise: 334 U. S. 495.

The Court: 334, all right. I am bringing out some of these cases that we might need so we won't be talking from memory.

We will take a brief recess.

(Short recess.)

[fol. 2836] The Court: All right, gentlemen.

By Mr. Paradise:

Q. Mr. King, paragraph 20 of the government's complaint in this action states as follows:

> "Defendant"—and that means Richfield Oil Corporation—"inspects, polices and supervises the activities and sales of the independent service station operators of the 2600 service stations involved herein, to make certain that no petroleum products or automotive accessories except those designated by defendant are sold, stored, or handled by the independent service station operator in the service station operated by him."

That sentence, as written, refers to those L-O stations, and 337 and 3-C stations. Confining your answer to the 337 stations, will you state whether or not Richfield has ever inspected, policed or supervised, to your knowledge, the activities or sales of the 337 dealers to ascertain whether any petroleum products or automotive accessories except those designated by Richfield are sold, stored or handled by the 337 dealer at his service station?

A. No, sir.

Q. Has that ever occurred, to your knowledge?

A. It has never occurred, to my knowledge.

Q. What has been Richfield's experience with respect to [fol. 2837] the success which Richfield's competitors have had in securing the business of 337 dealers under a written contract with Richfield?

Mr. Dixon: I object to that question, your Honor.

The Court: Read the question.

(The question was read.)

The Court: I don't know, but I think it is a little broad. I think you should specifically call for knowledge of dealings by competitors with the product rather than talk about success generally.

Mr. Paradise: I see. Thank you. I will reframe the question.

By Mr. Paradise:

Q. Mr. King, do you have knowledge of whether or not 337 dealers under a contract with Richfield have commenced buying gasoline from competitors, either during the term of their contract with Richfield, or subsequently, and when I say "subsequently," I mean at the expiration of the term.

A. Yes, we have——

Mr. Dixon: May I have the question again, please?

(The question was read.)

Mr. Dixon: I think the question is a split question, and I suggest to counsel that it be broken down.

The Court: Let's see if he can answer it generally, and then you can break it down.

[fol. 2838] The Witness: Yes, we have had experience where dealers have ceased buying our products prior to the end of the contract, and in other cases where the contract has been fulfilled, at the end of that time, why, they have decided to purchase their products from another supplier.

By Mr. Paradise:

Q. In those situations where a dealer has discontinued buying all gasoline from Richfield prior to the expiration of a 337 contract, has that occurred only in situations where the 337 dealer had signed a 337 sales contract and no paint agreement? Do you understand my question?

A. I am going to ask the lady to read it.

(The question was read.)

Mr. Dixon: If the court please, I am going to have to object to that question and ask that counsel confine the question to specific instances, in support of his previous answer.

The Court: Overruled.

The Witness: We have experienced both where 337 dealers, or dealers under a 337 contract with or without paint agreements, have stopped purchasing our products.

Mr. Paradise: Are you speaking of discontinuance prior to the expiration, or at the expiration of the 337 sales contract?

The Witness: I am speaking of prior; prior to the ex-
[fol. 2839] piration of the contract.

By Mr. Paradise:

Q. Under what circumstances has Richfield terminated 337 sales contracts prior to the expiration of the term for which they are written

A. The only time that we would terminate, or exercise our termination privilege, prior to the termination of the contract, would be where the dealer had ceased buying entirely from Richfield, in which event we would then exercise our termination privilege, so as to effect collection under the paint contract, if one was in existence with that dealer. Otherwise, we would automatically cancel the agreement so as to clear our files of inactive contracts.

Mr. Dixon: I didn't get that last statement. Will you read it please.

(The portion of the answer referred to was read.)

By Mr. Paradise:

Q. The procedure for clearing files of inactive contracts under the circumstances you mentioned is by the giving of a notice of termination, under those circumstances?

A. Yes.

Q. When in point of time are those notices given, in relation to the time when the dealer has continued or discontinued purchases of any gasoline from Richfield?

A. Not until he has entirely stopped buying our product.

Q. Do you have knowledge of any situation where Rich- [fol. 2840] field has terminated any 337 sales contracts where the dealer continued to buy gasoline from Richfield but failing to buy the agreed quantity specified in the contract?

A. No, I have no knowledge of that. It would be quite unusual to cancel out a customer under those circumstances.

Q. To your knowledge, has Richfield ever terminated any 337 sales contract or contracts in any station where the dealer continued to buy gasoline from Richfield, but at the same time bought and handled at the station a non-Richfield gasoline?

A. I have no knowledge of such.

Q. Has any such situation arisen in the past 10 years?

A. I do not recall of any.

Q. I mean where those physical facts have occurred?

A. I do not recall of any situation like that.

Q. To your knowledge, has Richfield ever terminated any 337 sales contract in any situation where the dealer continued to buy gasoline from Richfield, but has failed to buy from Richfield the quantity of oil or grease specified in the contract?

A. No, sir.

Q. I will repeat the same question, that is to say, has Richfield ever terminated a 337 sales contract in variously different situations, without repeating the question as to termination, that is, the situation where the dealer has [fol. 2841] bought some lubricating oil from Richfield and

has bought lubricating oils and greases from various other competitors of Richfield, Quaker State, Pennzoil, Standard, Union, Hy-Vis, et cetera?

A. No, sir.

Q. Has Richfield ever terminated the contract where the dealer has continued to buy some gasoline from Richfield, but has discontinued completely the purchase from Richfield of any lubricating oils or greases?

A. No, sir.

Q. Do you have knowledge of any situation where Richfield has terminated any 337 sales contract in any situation where the dealer either purchased, stocked or sold any petroleum products other than Richfield?

A. No, sir.

Q. Or where he displayed them?

A. No, sir.

Q. Or where he had signs of competitors', displaying them,——

A. No, sir.

Q. —or advertising them?

A. No, sir.

Q. Do you have knowledge of any situation where Richfield has terminated any 337 sales contract in any situation where the dealer has purchased, stocked or sold what has been referred to here as approved tires, batteries and ac- [fol. 2842] cessories, and by that I mean tires, batteries and accessories approved by Richfield for sale on its credit cards?

A. I would ask you to read that question, please.

(The question was read.)

A. That is a long question.

Q. Maybe my question was too complex, Mr. King. I will break it up. As a short-cut, we have referred to approved tires, batteries, and accessories as those approved by Richfield for sale on its credit cards. Now, my question is: Do you have knowledge of any situation where Richfield has terminated any 337 sales contract, where the dealer, the 337 dealer, either purchased, stocked or handled tires, batteries, or accessories other than Richfield approved tires, batteries or accessories?

A. No.

Q. Do you have knowledge of any situation where Richfield terminated any 337 sales contract under circumstances where the dealer purchased, stocked or sold approved TBA, but bought it from a source other than a Richfield TBA distributor?

A. No.

Q. Has Richfield ever attempted to control the operations of any 337 dealer with respect to the manner of the operation by the dealer of his station, or the manner of his dealing [fol. 2843] with his customers?

Mr. Dixon: I object to that, your Honor, as obviously calling for the conclusion of the witness, and that is a matter to be determined by the court, I think, and not by this witness.

The Court: I thought he was asking for knowledge. Will you read the question?

(The question was read.)

The Court: If that is modified as to his knowledge then it is all right.

Mr. Paradise: I will so modify it.

The Court: All right.

By Mr. Paradise:

Q. Do you have knowledge of any such attempt by Richfield or any of Richfield's employees?

A. I do not.

Q. Do you have knowledge of any attempt by Richfield, or any of Richfield's employees, to control the operations of a 337 dealer insofar as it concerns the cleanliness of his station or the maintenance of it?

A. No, we do not. The only knowledge I have of that is that, naturally, our sales representative would call to his attention, or could call to his attention some deplorable or detrimental situation in the hope he might correct it, so as to improve his business.

Q. As a sales aid?

[fol. 2844] A. As to a sales aid, but if the dealer did not care to follow our suggestions, that is where the matter stops.

Q. Is that similar in the situation of an L-O station?

A. No.

Q. Do you have knowledge of any attempt by Richfield or any of its employees to control the operations of any 337 dealer with respect to the hours of opening or closing of his station?

A. I have no knowledge of any direction along those lines.

Q. Or with respect to the wearing of uniforms?

A. We suggest to these dealers that they wear it constantly, the Richfield service station operators' uniform, but if they do not elect to wear it, why, that's where it stops.

Q. With respect to the handling by the dealer of non-Richfield gasoline and non-Richfield lubricating oil or grease?

Mr. Dixon: What is the question, counsel?

Mr. Paradise: Does he have knowledge of any attempt by Richfield or Richfield employees to control the operations of any 337 dealer in the respects I mentioned, that is to say, with respect to the handling by the dealer of competitive lube oil or grease?

The Witness: The answer is no, I have no knowledge.

[fol. 2845] By Mr. Paradise:

Q. Do you have knowledge of any situation in which Richfield has attempted to control the operations of any 337 dealer with respect to the source from which he purchased TBA merchandise?

A. No, sir.

Q. Mr. King, I show you Plaintiff's Exhibit 9, which is a yellow carbon copy of a letter bearing the date at the top June 16th, and then there is the numeral "8." I believe when you testified earlier in this case, you stated that that was received by you in 1938 rather than 1948. Is that correct, just to refresh the matter?

A. Yes, sir.

Q. You were one of the parties to whom that letter was addressed. At that time what was your position with the defendant corporation?

A. Manager of the Southern Division.

Q. That letter refers to split pump accounts, and to expedite this, I think you have already defined a split account as

a service station handling at the same time the brands of gasoline of several different supply companies, one or more different supply companies. Do you have a recollection of the number of split pump accounts, as so defined, which Richfield had at the time of that letter?

A. I recall that we didn't have—or, I recall that we had approximately twenty-odd so-called split pump accounts.

[fol. 2846] Q. Are you referring to the entire operations of the company?

A. No, I am referring to the Southern Division, of which I was manager.

Q. Do you have knowledge of the number throughout the entire operations of the company?

A. It would be in proportion of that. It would probably not exceed 40 or 50 such accounts.

Q. In total?

A. Yes, sir.

Q. Now, pursuant to or after the receipt of that letter to which I have directed your attention, what was done with respect to those 40 or 50 accounts?

A. We withdrew from those accounts, pursuant to these instructions.

[fol. 2847] Q. Was any public announcement to the trade made by Richfield in connection with that withdrawal?

A. Not that I know of.

Q. The instructions which are embodied in that letter, have they continued in effect from that time to today, up to today?

A. Well, the contents of the letter or the instructions in time became meaningless. They had no—they were of no effect.

Mr. Dixon: If the court please, I do not believe that answer is responsive to the question.

The Court: Well, that is all right.

By Mr. Paradise:

Q. Will you state what you mean by their becoming meaningless and when did they so become meaningless?

A. Well, in explanation of my answer I refer to the change in the buying habits of the public which influenced the buying habits of service station dealers to the point

where the vast majority of dealers preferred to specialize on the products of one supplier.

Q. When did that change or effect occur, to your knowledge?

A. Well, as I recall, the transition started back in the thirties, and I would say that by just prior to the last war probably 98 per cent of service station dealers were operat-
[fol. 2848] ing their stations on the basis of specializing or handling the products of one supplier.

Q. In your opinion, Mr. King, what factors have influenced such desire on the part of this 98 per cent of such dealers?

Mr. Dixon: I certainly object to that question, your Honor.

The Court: Well, all right. I will overrule it. But please consider that, as an expert, he may give his opinion. Go ahead.

The Witness: Just read the question.

(Question read by the reporter.)

A. Well, it is my opinion and it is my experience that the average motorist recognizes that he has a large investment in his automobile, probably the most expensive thing he owns outside of a home, and it has been the tendency on the part of the majority of motorists to give their business to those service station dealers who maintain and operate a good station, giving adequate service, careful service, and because the public has become, I would say, educated through the years by advertising to have a preference as to the products that they buy and they have greater assurance in patronizing a station specializing in the product of their preference, because if there is any mechanical failure to their car, if there is any dissatisfaction on their part, they
[fol. 2849] feel that they have more grounds for recovery of damages if damages exist, and so on.

By Mr. Paradise:

Q. In your opinion, has that attitude of the buying public which you have just mentioned reflected itself in the buying practices of these 98 per cent of independent service station dealers?

Mr. Dixon: The same objection, your Honor.

A. Yes, indeed, that has been our experience that by far the vast majority of dealers prefer to operate their stations on that basis, and to pick a supplier of their choice and to specialize on the products of that supplier.

By Mr. Paradise:

Q. When you testified here earlier in this case you mentioned in response to Mr. Dixon's questions Richfield current policies. I ask you does Richfield now solicit the business of the particular dealers who are presently operating split pump stations?

A. No. As a matter of practice and policy we are not soliciting the business of that type of dealer.

Q. Will you state what your reasons are for not making that solicitation?

A. We do not solicit that type of business because——

Q. I am talking about these particular dealers, this two per cent or less of dealers whom you have testified are in existence on the Pacific Coast and currently operating stations, split pump stations.

[fol. 2850] A. Yes, that is what I refer to. We are not soliciting that type of dealer for the reason that they generally and in most cases do not measure up to the standard of representation that we would like to have either in the service station facilities that they present, the type of service that they can give the public, the manner in which they are operated, and frequently because of their selling a gasoline at prices which are below the prices that Richfield directs on its product.

Q. On the other hand, does Richfield solicit the business of any independent dealer on the basis of the dealer's agreement or understanding that he buy all of his gasoline requirements from Richfield?

A. No, sir.

Q. I believe you testified earlier that you know of no independent dealer—and I think the question was so broad as to include not only the 337 dealers whom we have been talking about but also 3-C dealers, and I am speaking of the present time—who are handling Richfield gasoline and who, at the same time, are handling the gasoline of one

of Richfield's competitors. Do I correctly summarize your testimony?

The Witness: Well, I would like to have it read over.

(Question read by the reporter)

By Mr. Paradise:

Q. I see I have put so many qualifications in that, Mr. [fol. 2851] King, that it might be difficult to answer. Is this a correct summary of your former testimony—and this was in response to a question by Mr. Dixon—that you know of no instance in which an independent dealer, 337 or 3-C, who is handling Richfield gasoline and is also, at the same time, handling the gasoline of one of Richfield's competitors?

A. I have no knowledge of such a situation today.

Q. In your opinion, Mr. King, why has that result occurred?

Mr. Dixon: I object to that question.
The Court: Overruled.

A. Well, it is my opinion, as I expressed here a few minutes ago, that the vast majority of dealers today are catering to the buying habits of the public who prefer to patronize stations specializing in the products of some one company. And it has further been our experience that if a dealer becomes dissatisfied with Richfield, either our service or products, that he just cancels his contract and we are entirely through at his station.

By Mr. Paradise:

Q. In your opinion, has that situation occurred voluntarily or at the requirement of Richfield or of any other oil company? I will forget "any other oil company." That is not involved. In your opinion, has that situation occurred as a result of the desire of these 337 or 3-C dealers or as the result of a requirement or act on Richfield's part? [fol. 2852] Mr. Dixon: The same objection, your Honor.
The Court: Overruled.

A. No. That is the prerogative of the dealer, of the class of dealer that we are speaking about. If he sees fit to stop purchasing from Richfield, why, certainly he can do so. We have found out that they do it whether they have a contract or not.

Mr. Paradise: Your Honor, I am about to turn to a different subject matter, if your Honor considers this an appropriate time to stop.

The Court: All right, 2:00 o'clock.

(Whereupon, a recess was taken until 2:00 o'clock p.m. of the same day, Friday, May 25, 1951.)

[fol. 2853] Los Angeles, California, Friday, May 25, 1951.
2:00 P. M.

The Court: All right, gentlemen.

William G. King, called as a witness by and on behalf of the defendant, having been previously sworn, resumed the stand and testified further as follows:

Direct examination (Continued).

By Mr. Paradise:

Q. Mr. King, before we leave the subject of the 337 dealer stations, are any instructions given to the dealers in the 337 stations with respect to tires, batteries and accessories,—instructions of any nature?

A. Yes, 337 dealers are instructed as to Richfield's approved list of TBA items that it is proper for those dealers to charge on Richfield credit cards.

Q. Is it a correct statement, to expedite this, Mr. King, to say that when a dealer sells any of these approved items on credit cards issued by Richfield, that the dealer may use the credit ticket in lieu of cash in buying petroleum products from Richfield, and that Richfield assumes the full credit collection from the purchaser?

A. That is provided the sale has been made on a card that has not expired.

[fol. 2854] Q. Mr. King, I hand you a red folder entitled, "Credit Card Regulations," and ask you if this embodies the instructions on the subject-matter of approved TBA and credit cards?

A. Yes, it does.

Q. This particular instrument, I see, is dated June 1, 1950. Have prior editions of this also been issued?

A. Yes, sir.

Q. To what persons are these credit card regulations issued?

A. These credit card regulations are issued to our lease station operators, and all Richfield independent dealers operating under either one of our two forms of sales contracts.

Q. Then these credit card regulations are not applicable to just one of the three types of dealers?

A. No, to all service stations handling our products.

Mr. Paradise: May I offer this as Defendant's next in order?

The Court: It may be received.

The Clerk: Defendant's Exhibit Q in evidence.

(The document referred to was marked Defendant's Exhibit Q, and was received in evidence.)

By Mr. Paradise:

Q. Now, Mr. King, coming perhaps to one of our last subject-matters, the 3-C stations, I think you described this morning the reason for entering into a 3-C transaction in-
[fol. 2855] stead of a 337 transaction. Will you describe now what constitutes a 3-C transaction, as you understand it?

A. The 3-C proposition consists of a lease from the dealer to Richfield and a lease back from Richfield to the dealer, together with a sales contract to accompany the sublease to the dealer.

Q. Those respective forms are designated Form 362, a lease by the dealer to Richfield; Form 668, the sublease by Richfield back to the dealer; and Form 783, the operator's sales contract; is that not correct?

A. I believe those are the form numbers.

Q. I just identify those for the purpose of the record. Those three instruments are executed, are they not, all as a part of one transaction?

A. Yes, sir.

Mr. Paradise: I ask leave of court and counsel to ask leading questions here just for the purpose of clarifying this.

Mr. Dixon: No objection.

By Mr. Paradise:

Q. Now, is the obligation of the 3-C dealer under this sales contract, which is Form 783, the same as the obligation of the 337 dealer, under the 337 sales contract with respect to his obligation to purchase petroleum products?

A. Yes, sir.

[fol. 2856] Q. I call your attention to the fact that as to the 3-C sales contract the form of it was changed in 1948. Mr. King, I show you Government's Exhibits 4-B and 4-C. Both of them are entitled "3-C Operator's Sales Contract," and they are both on Form 783, by the way. Form 783 bears a print date—well, on this copy it is illegible, but it is prior to 1948.

Mr. Dixon: 7-45, counsel.

Mr. Paradise: Is that what it is?

Mr. Dixon: Yes.

By Mr. Paradise:

Q. Exhibit 4-C bears a print date of 8-48. I call your attention to the difference in the provisions of paragraph 1 relating to the obligation of the dealer to purchase gasoline and other petroleum products. Will you state just briefly what differences there were in those two forms—or, may I withdraw that? Is it not correct, Mr. King, that the form of sales contract which was in use prior to the reprint of August of 1948 required the dealer to purchase his entire requirements of petroleum products?

A. That is correct.

Q. During what period was that form in use by Richfield?

A. This form was in use from the inception of this par-

ticular contract, which was first used in about 1945, and this form was in use up until about the middle of 1948.

Q. Now, what was Richfield's purpose in requesting the [fol. 2857] dealer to purchase his entire requirements during that period?

A. Well, as I have previously pointed out, this proposition is used only in those instances where Richfield, as a result of competition, must make some investment in the service station, and it was our feeling that that was a reasonable request to make, a reasonable contract to write.

Q. When you wanted the dealer to purchase his entire requirements, you so stated in your printed form of contract, is that correct?

A. That is right.

Q. What change was made in 1948?

A. In 1948, following Judge Yankwich's decision in the Standard Oil case, upon the advice of our legal department I issued instructions to provide that this sales contract would call only for a stated quantity of gasoline which quantity would not exceed 85 per cent of the dealer's known requirements.

Q. Is it correct that the provisions relating to quantities, that is to say, that the printed form, regardless of the instructions as to how the quantities were to be arrived at —that the printed form as revised in 1948 was made similar to the printed form 337?

A. Yes, they are identical.

Q. Did the legal department advise you as to the reasons for its request that you make that change?

A. Well, as I point out, it was following Judge Yank- [fol. 2858] wich's decision in the Standard Oil case, that it was naturally felt that the exclusive provision of the sales contract that we were then using would be illegal.

Q. Following the issuance of those instructions and the printing of this new form of sales contract what was done with respect to the 3-C sales contract then in existence?

A. Our representatives were instructed to amend all existing sales contracts by mutual consent with the dealers involved, to the point where the entire requirements provision was eliminated and the specific quantity provision was substituted.

Q. Do you know whether negotiations to effect that result were undertaken by your personnel?

A. I did not hear your question.

Q. I say, do you know whether negotiations to effect that result were undertaken by your personnel?

A. Oh, yes. We managed to so amend all of the existing 3-C propositions, with the exception, I believe, of it was either three or four, where the dealer in question for one reason or another declined to make changes.

Q. Subsequent to the issuance by you of those instructions in the fall of 1948 and the issuance of that new form, has Richfield, within your knowledge, entered into any contract, agreement or understanding, either oral or written, with any independent service dealer under a 3-C transaction under which the dealer has agreed or obligated him-
[fol. 2859] self to restrict the brands of petroleum products or automotive accessories which are handled by him to those brands designated or approved by Richfield?

A. No, sir.

Q. Or whereby the dealer has agreed or obligated himself to purchase or acquire from sources designated by Richfield all automotive accessories sold at his service station?

A. No, sir.

Q. It is correct, is it not, that those forms of 3-C sales contract, as well as the 337 form of sales contract, either before or after the alteration of the form, covered nothing but petroleum products, and did not cover automotive accessories?

A. That is correct.

Q. Within your knowledge, Mr. King, has Richfield ever attempted to terminate the sales contract of a 3-C dealer and, at the same time, retain a leasehold interest in the 3-C dealer's station?

A. No, we never have.

[fol. 2860] Q. What contact does Richfield have with the 3-C dealer after the written contracts have been signed?

A. Our sales representative or salesman, as we call him, who originally negotiated the deal continues to call on the account, to retain the account's good will, and to insure the continuance of our business relations, and, in

addition, our tank truck salesman who delivers products to the account is another contact.

Q. Now, without referring to the exhibits, let me refer to this fact: There has been testimony, Mr. King, that with respect to a station held by Mr. Moore in Medford, Oregon, that Mr. Moore held a 3-C sublease from Richfield, and a 3-C sales contract, but that the lease to Richfield was from a Mr. George Field, someone other than Mr. Moore. Calling your attention also to a different transaction, there was a witness called by the government, a Mr. Colmery, and Mr. Colmery likewise held a 3-C sublease on a Richfield form, and a 3-C sales contract with Richfield, but Richfield held its lease not from Mr. Colmery, but from the property owner as to two stations there involved. I would like to ask you if that type of transaction is typical of the 3-C transaction, as you have described it.

Mr. Dixon: I object to that, your Honor. It calls for the conclusion of this witness.

The Court: He can testify what the general type of trans-[fol. 2861] action is, if he knows, but to pick out a particular man and call that to his attention and ask him whether it is characteristic calls for a conclusion.

Mr. Paradise: Perhaps so.

The Court: You can ask him if there are many transactions of that type, that he knows of.

Mr. Paradise: Yes. Thank you, your Honor.

By Mr. Paradise:

Q. Are there many 3-C transactions, Mr. King, where the lessor to Richfield is a party other than the lessee from Richfield?

A. No, they are decidedly few, and, to my best knowledge, I don't suppose there are over three, or four, or five, and that is a decided exception to the customary 3-C transaction.

The Court: What makes them an exception? What causes that fact? Is it your desire to have the landlord in, or is it because he wants it that way, or what? Do you know?

The Witness: Well, yes, I think I can explain that to your Honor. Customarily we are dealing with an independ-

ent dealer who either owns his place of business or has a lease on it from some other party, so our entire transaction in, we will say, 99 per cent of the cases is between the dealer and Richfield. It is a lease and a sublease.

Now, to further illustrate the situation, Mr. Paradise brought up or mentioned the Colmery deals. You might be [fol. 2862] interested in knowing how they developed, as an exception.

Mr. Colmery acquired during the war leases on two pieces of vacant real estate, and he had the obligation under those leases to build a service station as soon as building restrictions were removed.

He found, when the time came, that he couldn't finance the building of the stations on those two pieces of property, and yet he was very anxious to go into the service station business at those locations, which he considered to be quite valuable.

He came to Richfield, and Richfield agreed to build stations on both properties. Instead of taking an assignment of the basic lease, or the lease that he had with the property owners, a new lease was written between the owners and Richfield, and then we, in turn, subleased back to Mr. Colmery.

The Court: You assumed the obligation that he had formerly had?

The Witness: Yes, sir.

The Court: To build stations?

The Witness: Yes, sir; and, in turn, to sublease the service station, the property, back to him. I bring that out to show why it is an exception to the routine.

The Court: I wanted that brought out. That is why I pointed out to Mr. Paradise that you can point out to me the facts, and then I myself can determine why the [fol. 2863] pattern was departed from.

By Mr. Paradise:

Q. Mr. King, on Friday of last week there was a witness called by the government, a Mr. Robert J. DeLonge, who testified that he was the lessee of a Richfield L-O station in Olympia, Washington, known as the One Stop Service Station, and he leased it from Richfield on a Form 542.

He also testified during the course of his examination, if I recall his testimony correctly, that during the second month of his tenancy, the commission agent, a Mr. Kisor, came to Mr. DeLonge and told him that it was customary for the operator in that particular station to pay the local commission agent, who happened to Mr. Kisor, the sum of $100 per month rent over and above what he was paying to Richfield. This witness, Mr. DeLonge, also testified that Richfield didn't know anything about this, and that this was a personal transaction between him and Mr. Kisor. I want to ask you if this testimony of Mr. DeLonge has been brought to your attention.

A. Yes, it has.

Q. When, and by whom?

A. By Mr. DeMartini.

Q. When did that occur?

A. Following that information,——

Q. I mean, when was this brought to your attention?

A. I believe it was Monday of this week.

[fol. 2864] Q. I would like very much to have you explain to the court what you have done with respect to that matter since learning that information.

A. I personally called Mr. Kisor on the telephone at Olympia, Washington. He, as you know, although he was, is no longer our commission agent at that point, and he hasn't been for several years, three years, in fact. He is still a TBA distributor and heating oil distributor.

I called Mr. Kisor and told him about Mr. DeLonge's testimony, and asked him if he would verify and tell me if he had or had not collected rent from DeLonge, while he was a lessee of ours in that particular station. The next day, after he had consulted his accountant and examined his books, in answer to my question he admitted that he had collected rent from DeLonge at the rate of $100 per month, while he was at that station.

Q. Did you take any further steps following that discussion?

A. Yes, I have. I have already issued instructions that Mr. DeLonge—or, that Mr. Kisor is to be terminated as our TBA distributor, and that his contract as a heating oil distributor will be terminated as soon as it can be done,

and, in addition, our representatives in the Northwest have instructions to contact Mr. DeLonge and determine how much rent he paid to Mr. Kisor, and Richfield will reimburse him for every cent that he paid under that arrangement. [fol. 2865] Q. When was Mr. Kisor last commission agent for Richfield, how recently?

A. He has not been a commission agent since about the middle of 1948.

Q. There is just one other subject matter I would like to question you concerning and that is the subject matter of Richfield's interest in TBA which we have referred to in this case as an abbreviation for tires, batteries and accessories. Will you describe rather briefly the nature of Richfield's activities in tires, batteries and accessories, when they started and what the purpose of it was?

A. Richfield is naturally interested in giving complete service to its customers at the greatest number possible of our service stations. Complete service means more than the sale of gasoline and lubricating oils. It includes the ability or the privilege or the opportunity of the customer to purchase all of his car requirements at a Richfield station. In addition, we are interested in seeing that our dealers and our operators increase their income, as we know that they cannot have a successful operation solely on the profits to be derived from the sale of petroleum products. So in order to do this, Richfield carefully examined the various TBA products on the market and selected what we considered to be the most representative and the finest quality products, whether they be tires or batteries or automotive accessories, or of one kind or [fol. 2866] another.

Q. Did you make any investigations concerning quality?

A. Oh, yes. In other words, our people charged with that responsibility investigated the various makes and types of equipment and, as a result of that, we established what we call Richfield's approved list of TBA items.

Q. In the selection of the type of items which would go on this list or the particular items which would be included in this list was any consideration given to the responsibility or guaranty of the particular manufacturer involved?

A. Well, naturally, that was an important part of our

decision to select the items we did, representing, as they do, the products of reputable manufacturers who stand behind their products and who would guarantee their performance and quality.

Q. Richfield obtains a profit, does it not, with respect to the TBA, the approved TBA sold either directly by Richfield to service stations or by Richfield to TBA distributors?

A. Yes, sir.

Q. That is correct, is it not?

A. Yes, sir.

Q. And that profit takes the shape of both a margin between a purchase price and sales price with respect to some items, and a commission with respect to other items? [fol. 2867] A. Yes, sir.

Mr. Paradise: For the purpose of the record, I might say that in Government's Exhibit——

Mr. Dixon: 26-A

Mr. Paradise: —26-A, in response to the subpoena duces tecum Richfield has shown and there is attached a list of a few—I think some 26-odd—service station dealers to whom Richfield has made direct sales, and also the volume in terms of dollars of tires, tubes and batteries of the direct sales to those few dealers.

Q. Mr. King, what is the reason, if there is one, for those direct sales to those particular dealers?

A. Those where we have made such arrangements directly with the dealers is brought about by the fact that those dealers are such large operators. In other words, they sell such a large volume of TBA items that they are entitled in the trade to the best possible proposition.

Q. In other words, they get approximately the same discount that the TBA distributor himself would get?

A. That is right.

Q. Is that right?

A. Yes, sir.

Q. Other than those particular stations which are listed in paragraph No. 11 of Government's Exhibit 26-A to [fol. 2868] whom does Richfield sell the approved TBA?

A. To appointed or designated TBA distributors.

Q. Reference is also made in Government's Exhibit 26-A—I do not recall the precise subdivision of it—to the

fact that those TBA distributors have advised Richfield that approximately 30 per cent of the quantity of tires, batteries and accessories purchased by those TBA distributors from Richfield have been sold by them to service stations other than service stations handling Richfield petroleum products, that is to say, to other than Richfield L-O stations, 3-C stations, or the 337 stations. Is there any difference between the L-O stations, on the one hand, and the 3-C and 337 stations, on the other hand, Mr. King, with respect to the Richfield's practices concerning approved TBA items?

A. Yes, there is a difference.

Q. Will you state what that is, please?

A. In the case of the operators, of our L-O stations, they are directed by our representatives to handle a representative line of our approved TBA items. In the case of our 337 and 3-C dealers they are instructed as to the TBA items—they are told, rather—they are told about the approved items on the TBA which they are privileged to sell upon Richfield credit cards. In other words, they are told what they can charge on our credit cards. Naturally, we suggest and we hope that they will stock those items, [fol. 2869] but if they do not elect to do so, why, that ends the matter.

Q. One, and perhaps the final, question. The 3-C transaction as you have described it involves generally a lease to Richfield under which Richfield is the lessee and a lease by Richfield to the operator. The lessor under the lease to Richfield is generally, as I understand it, the same person as the operator. You have also testified that there is a type of L-O station under which Richfield is the lessee from a person other than the operator and that Richfield has installed an L-O operator in that station. Would you state whether there is any difference in result with respect to that situation insofar as termination of the lease to the operator is concerned?

A. Yes, there is a difference. In the case of where Richfield leases a service station property from other than the dealer, why——

Q. That is, the L-O station you are referring to?

A. That is the L-O station I am referring to. —why, in

that instance we sublease to the operator on a lease that is subject to mutual cancellation on 24 hours notice. That differs from the 3-C proposition, where the lessor is the dealer and we lease from that dealer and sublease back to him concurrently for the same period of time.

Q. My question was directed, however, to the result of the termination of the lease by Richfield to the operator. [fol. 2870] A. Well, we can terminate that lease on 24 hours notice.

Q. I did not mean so much as to the nature of the right to terminate, but the effect of termination. Upon termination of the sublease to a 3-C dealer who thereafter continues in occupancy of that station?

A. The dealer who originally made the lease to us.

Q. And on termination of the tenancy of an L-O operator who remains in occupancy of the station?

A. Richfield.

Mr. Paradise: No further questions.

Cross-examination.

By Mr. Dixon:

Q. Mr. King, I do not think it is too important to the issues of this case, but I believe you had testified to the effect that you built, that is, Richfield built refining facilities during the war which it did not need in order to serve the Government, at its cost, is that correct?

A. Yes, that is correct.

Q. I presume those projects or the construction of such additions as to make your refinery capacity were made under the Defense Production Act, was it, if you know?

A. I do not know, because that is not under my jurisdiction.

Q. I appreciate that. Can you tell the court, if you know, whether or not Richfield amortized any costs that were [fol. 2871] incurred in construction of that project under the five years provisions of the Act?

Mr. Paradise: I might state that we will provide a witness who is qualified on that.

Mr. Dixon: I am just asking if he knows.

The Court: He wants the fact of whether he knows.

A. No, I do not know, Mr. Dixon, because that, as I repeat, is not my authority.

By Mr. Dixon:

Q. In other words, you are not familiar with that. The only thing you know about it is that those facilities were constructed and are used by Richfield in producing products which you sell to the consuming public?

A. Yes.

Q. I believe you testified somewhat at length concerning Defendant's Exhibit O, which purports to deal with the persons who are authorized to sign certain documents for Richfield. Does that apply, as far as authority is concerned, Mr. King, only to anything that is in writing insofar as Richfield is concerned?

A. That authority or that chart that we have discussed, Mr. Dixon, clearly designates those individuals who have the authority to execute on behalf of the corporation certain documents.

Q. Any document that is in writing, I think, is that correct?

[fol. 2872] A. Any document that is in writing.

Q. Did you or anyone under your supervision ever put out any comparable chart of instructions with reference to the authority of anyone under your supervision concerning oral arrangements which they might enter into?

A. No, sir.

Q. On behalf of Richfield?

A. No. Never have any instructions been issued which would authorize anyone in Richfield's employ to enter into an oral contract. In fact, just the contrary, the instructions have been that no oral agreements are to be entered into and that the only agreement—and that all details of any agreement between Richfield and a customer are limited to what is contained in the contracts or documents that were executed with that party.

Q. I am particularly interested, Mr. King, in any written instructions that you may have given to anyone under your supervision or connected with the company to that latter effect. Did you ever give any such instructions in writing?

A. I cannot recall the exact time, but I am positive that—

I feel positive that instructions have been issued in writing to our representatives that no representations, promises, or any agreements are to be made orally, and that everything that is to be binding upon Richfield is to be contained in the document that is executed.

[fol. 2873] Q. So that if you gave any instructions, would you be able to submit them to the court and make them a part of this record?

A. Yes.

Q. And will you endeavor to ascertain whether you have any copies of such contracts in your file, Mr. King, and if you have any, will you make them available to the court, through your counsel?

A. I will do that. I would like to say here that instructions have been issued, or, are issued orally from time to time throughout the years to our responsible managers and other representatives, clearly pointing out to them that they are to confine their remarks or their negotiations to conform to the terms of our contracts.

Q. I was asking, Mr. King, only for any written instructions that you circularized among anyone who was under your supervision or negotiated with your dealers.

A. Yes, sir.

Mr. DeMartini: If I may interrupt you, Mr. Dixon, there is such in evidence now.

Mr. Dixon: You mean this Exhibit O, counsel?

Mr. DeMartini: Yes, sir.

Mr. Paradise: Do you want it pointed out?

By Mr. Dixon:

Q. I will ask Mr. King. I am sure he can point it out to us. Do you find any instructions of the type you have just [fol. 2874] suggested were given, Mr. King, on your examination of Defendant's Exhibit O? (Handing document to witness.)

A. Well, I think what counsel refers to here is the paragraph to the effect that when any of the agreements under item H, which are the marketing department agreements——

Q. And if I may interrupt you, those items under item H

are the written agreements described under that item H; is that correct?

A. Yes, they are written agreements, and there are instructions here to the effect that when the agreement contains unauthorized alterations or insertions in conflict with the printed provisions of the form or in violation of the established company policy, that it must be presented to my office before it can be executed.

Q. I see. That, then, is what you regard as the equivalent of instructions to all members of your staff or your department concerning the authority to enter into any kind of an agreement, written or oral, is it not, Mr. King?

A. Well, I am positive, Mr. Dixon, that our instructions during the years, oral or otherwise, have been quite explicit to our various managers on how they are to negotiate agreements on behalf of this company.

Q. Now, your company does sell a rather substantial amount of gasoline and other petroleum products to the con- [fol. 2875] suming public, does it not?

A. Yes.

Q. And some of those sales are made for resale purposes to the operators of so-called service station outlets, are they not?

A. You are referring now to what we call the independent dealers?

Q. No, I am referring to any service station outlet of the type referred to as an L-O, 337, or 3-C type of outlet.

A. Oh, we sell gasoline to all those three classes of operators and dealers.

The Court: In other words, you have no direct sales, retail sales, have you?

The Witness: If you mean through a company-operated station, no. That was brought out in my previous testimony, your Honor.

The Court: Well, there are instances where you sell direct, don't you? Or do you? Don't you sell direct to these boats in the harbor?

The Witness: Yes, but I think Mr. Dixon's question was aimed at what we call resale.

The Court: No, any resale, regardless of outlet.

The Witness: Yes, we have several, what we call marine

stations, but they are not operated directly by the company. They are usually what we call a dealer, under a contract, or [fol. 2876] they are operated by what we call a commission agent.

The Court: All right. I don't know where I ran into it, but I think it was in one of the maritime cases that I learned about these boats that go out and furnish gasoline.

The Witness: Yes, there are. Some of our competitors do have what they call the refueling barges to refuel pleasure boats. We don't have anything like that, but we do have small craft stations, operated either by dealers or by commission agents.

The Court: I see. All right.

By Mr. Dixon:

Q. Directing your attention specifically to any sales which Richfield may make to the operators of any one of the three types of outlets to which you sell for resale purposes, namely, the operators of L-O, 337, and 3-C outlets, with reference to the 337 and the 3-C outlets, I believe you testified, and the record shows, that you do have a written sales contract with the operator of such outlets. That is a fact, is it not, Mr. King?

A. We do have a written sales contract with the dealers in the case of the 3-C proposition and the 337. You call them "operators." I want to call them "dealers."

Q. All right. We won't quarrel over that. Perhaps it would be better to call them buyers of petroleum products. Is that a fair classification of the operators or dealers?

A. I think you could call them buyers, the dealers that [fol. 2877] we refer to,—dealers or buyers, yes.

Q. It is a fact, is it not, also, that the operators of the so-called L-O type of outlet buy petroleum products from your company, do they not?

A. Yes, sir.

Q. And it is also a fact that you have no written arrangement with any one of the operators of such outlets covering the terms and conditions of the purchase or sale of any petroleum products from your company; that is a fact, is it not?

A. We have no written agreement. They are told when

they are installed the basis on which they will purchase products.

Q. But, in any event, you do not have anything comparable in writing to what you have with the operators or buyers of the petroleum products at the 3-C or 337 outlets?

A. That's right.

Q. Now, who determines the price that you are going to charge the operator of the L-O outlet, for the gasoline that he buys from your company?

A. They are told that they will purchase at Richfield's published and posted prices from day to day, as it pertains to gasoline or lubricating oils or greases. We have at Richfield's wholesale plants a posting which comprises our posted tank-wagon price on gasoline, and what we call our [fol. 2878] dealer list price on automotive oils and greases.

Q. By "told" you mean they are told orally?

A. They are told orally. Naturally, they would want to know on what basis they would purchase their products, and they are told it is our posted prices, as posted by the corporation, which determines the price that they will pay.

Q. And that information is generally conveyed to them, is it not, by the merchandiser who is talking with the operator or prospective operator of the L-O unit?

A. Yes, our merchandiser tells the operator that information, and as I pointed out, that information is conspicuously posted on a bulletin board at every wholesale distributing plant where every customer, regardless of type, can see it.

Q. And that is the same price that is charged to the operator or the buyer of the gasoline who is at the 3-C and the 337 outlet, is it not, Mr. King?

A. Not always.

Q. Oh, is there a different price given the operator of your L-O outlet, or the L-O outlet, for the same quantities of gasoline that he buys, as compared with the same quantities that are bought by the operator of the 337 or the 2-B or 3-C outlets?

Mr. DeMartini: That is objected to, your Honor. Difference of price is not an element in this case.

The Court: Overruled. Go ahead.

[fol. 2879] The Witness: As I——

Mr. Dixon: I don't want to interrupt your answer, but can you answer that first either "Yes" or "No," please?

The Court: Yes, give a "Yes" or "No," and then you may explain.

The Witness: Will I be given permission to explain?

The Court: Oh, yes. Just answer "Yes" or "No," first.

The Witness: Will you read the question, please?

(The question was read.)

Mr. Dixon: I might add to that, "In the same area."

The Witness: Yes. Now, may I explain, your Honor?

Mr. Dixon: Yes, will you kindly explain the difference, Mr. King?

The Court: Yes.

The Witness: In every area in which we operate Richfield posts its wholesale, or what we call tank-wagon prices. I have previously pointed out in my testimony that in soliciting the business of independent dealers under the 337 and 3-C contracts, that we are competing for that business with all other competitors, and there arises in numerous instances the necessity of meeting a price offered by a competitor to that dealer, which extends a discount below our wholesale or posted price. Therefore, if we are to compete for that business, we have to make the decision whether or not we wish to extend that discount.

[fol. 2880] Q. Is that discount provision contained in your written sales contracts, Mr. King, with the 3-C and 337 operator, or is that a matter of oral arrangement at the time or after the contract is entered into between Richfield and such operator?

A. No, there is no oral arrangement. Wherever it is necessary to extend that additional discount, a typewritten amendment or addition to the printed form of contract in letter form is provided the dealer, which states that in order to meet—or, that we are extending this additional discount in order to meet the competition which has been represented to us, and that we hereby extend to him the discount that was discussed between the dealer and our representative, who negotiated the contract.

Q. Is that discount provision in the sales contract made a permanent part of that contract and in effect as long as the contract is in effect?

A. It runs concurrently with the contract, and provides that it may be canceled by Richfield at any time on notice, in which event the dealer is privileged to cancel his contract with Richfield.

Q. Now, is that discount that you have mentioned given only to the operator of the L-O and the 337 outlet, Mr. King?

A. No. That discount that I have mentioned is extended [fol. 2881] only to dealers under contract with the 337 contract or with the 3-C proposition.

Q. Yes.

A. Pardon me. I retract that. The discount in the case of the 337 dealers is handled in the manner which I have described.

Q. And is it handled in the same manner with the 3-C operator?

A. No.

Q. Or purchaser?

A. No. It is handled in two ways, either in the difference between the rent that we pay our lessor under the 3-C proposition and the rent that we collect from him, or in the event that the rent paid and received is the same, then a letter is provided which calls for the additional discount that we have found necessary to extend to that dealer, in order to acquire his business, in order to meet competition.

Q. Well, it is a fact, then, that within the same area a buyer of your petroleum products, that is, gasoline, under the 3-C or the 337 type of sales contract might be paying a different price to you for the gasoline purchased from Richfield; is that a fact, Mr. King?

A. That is correct.

Q. Now, when you do that, though, you put it into the [fol. 2882] written part of the written sales contract with such operator; is that correct?

A. Yes, sir.

Q. Now, do you ever give the operator of the L-O outlet who buys gasoline from Richfield a discount over any other L-O operator in the same area,——

A. No.

Q. —who is buying gasoline from you?

A. No. Our L-O operators all purchase at Richfield posted wholesale or tank-wagon prices.

Q. I believe you testified on direct examination that you gave some of your L-O operators a discount from the price that they paid you for gasoline; is that correct?

A. No, I believe you misunderstood that, Mr. Dixon.

Q. All right. Will you correct me and tell me what you did testify to?

A. I did not say that we gave the L-O operators any additional discount. Under examination I pointed out that we did given them subsidies of various forms and I will enumerate them again. We, first of all,——

Q. Excuse me. May I interrupt you, Mr. King? I am talking now about the purchases of gasoline, Mr. King, by the L-O operator from Richfield. There are such purchases, are there not?

A. Yes, sir.

[fol. 2883] Q. All right. Now, with reference to such purchases, do you ever give the operator of any L-O outlet any rebate from the purchase price of gasoline that he buys from Richfield, which you do not give to other L-O operators in the same area, where your posted price is in effect?

A. Yes, that could—when you say "in the same area," of course, an area might be small, the same area might be huge or be a very small area.

I pointed out in my testimony that in the case where our dealer is confronted with meeting cut prices, or, I mean where our operator is confronted with meeting cut-price competition, that we will in those cases permit him, if he so elects, to reduce his price to the public to meet such competition, in which case we subsidize him to the amount of the reduction from our directed retail price.

The Court: Those are extraordinary circumstances? Other than that, do you give them any advantage in price, as comparable to other dealers working on different contracts in the same locality, say?

The Witness: Let me try to explain that to you, your Honor. All L-O operators are billed at our posted wholesale or tank-wagon price in effect for that area.

The Court: Yes.

The Witness: As I have testified here, we do go so far as to entirely eliminate their rent at times, which you might

[fol. 2884] interpret as being a discount or a reduction from the posted tank-wagon prices.

The Court: Other than those matters which are resorted to under special circumstances, do you give them any preference at all in billing the prices which you bill him? You see, both Mr. Dixon and I have tried to get an answer to that and to get an explanation. I am not trying to trap you.

The Witness: I understand.

The Court: And I know he isn't.

The Witness: No.

The Court: Or if he is, I am not aware of it, and I usually know.

Mr. Dixon: Thank you, your Honor.

[fol. 2885] The Witness: In answer to your question, the L-O operator is given no discount below our posted tank wagon price, but he is given the relief, the subsidies that I have heretofore mentioned.

The Court: All right.

The Witness: Such as rental abatements and/or subsidies in order to meet cut-price competition.

The Court: All right. Then, subject to those limitations or exceptions, he is billed at the same price which is set for all outlets at the particular time?

The Witness: Yes, sir.

The Court: Well, that is a summary of it.

By Mr. Dixon:

Q. Is that the same sort of action, Mr. King, which is taken with the L-O operator, as you have described, that is taken with the 3-C and 337 operator or purchaser of gasoline from Richfield?

Mr. DeMartini: I object to that as being ambiguous. I do not understand the question.

Mr. Dixon: I think it is clear.

The Court: What are you getting at?

Mr. Dixon: I am trying to find out, your Honor, whether this action which the witness testified was taken with reference to rebates in the sales contracts of 3-C and 337 operator is of the same kind that is given with reference to the L-O operator.

[fol. 2886] The Court: He has given us the exceptions and

you want to know if those exceptions are made to apply to the other type of dealers?

Mr. Dixon: That is correct.

A. I have heretofore pointed out or told you that we will give 3-C dealers and 337 dealers discounts from the tank wagon price where we find it necessary in order to meet competition and in order to acquire their business. Where we do not have to meet competition, they purchase their products at our posted tank wagon price.

By Mr. Dixon:

Q. Mr. King, that is not my question. I am sorry, but——

The Witness: Well, maybe I did not understand you, sir.

Q. I hate to take any further time to go over the matter, but it is a fact that you do enter into the written sales contract with the 3-C and the 337 operator, and after the contract has been signed and in effect, a modification of that by nature of a rebate or a reduction in the price charged him for the gasoline which he purchases over other buyers of the same amount of gasoline in the same area?

A. If I understand your question——

Q. Do you understand my question?

A. I am going to try to answer it.

Q. Thank you.

The Court: Go ahead.

[fol. 2887] A. If I understand your question correctly, when we negotiate either one of those two contracts that you have mentioned we are confronted with this competition and we write into the agreement at the time it is executed by or signed by the dealer, we write into the agreement at that time the discount which we have found necessary to provide to meet competition to acquire that business.

The Court: But he wants to know whether any other discounts are made available to him which are not in the written agreement for the purchase of supplies.

The Witness: No, sir. I can answer that.

By Mr. Dixon:

Q. I believe you testified, Mr. King, that in order to help the L-O operator along you did give him this discount or rebate or whatever you want to call it in certain areas, at certain times, where the situation was what you call competitive, is that a fair statement?

A. Yes. I think I would like to clarify your question.

Q. No, it is not a question now. I am asking you if you stated that.

A. Yes. We give him this subsidy that I have pointed out to you in order to enable him to meet competitive situations.

Q. Do you also give that to other purchasers of your gasoline buying from you under the 337 and 3-C type of sales contract in the same area, at the same time?

[fol. 2888] A. No.

Q. So that you do not give, then, to the purchaser under the 3-C and the 337 sales contract the same discount or rebate, as we have referred to it, as you give to the L-O operator at the same time, in the same territory, is that a correct statement?

A. Does your question apply in order to meet competition?

Q. I am assuming that the conditions are the same, in the same territory, at the same time, yes.

A. The answer is no.

Q. I believe you testified that Richfield purchases the fee of some of these L-O outlets or acquired the underlying lease of some of these L-O outlets to which you sell gasoline and petroleum products to supply an outlet and a market for your production. That is, the production of gasoline and petroleum products was the goal which you were aiming at, is that correct, Mr. King?

A. Yes, sir.

Q. So that there is a market, then, which is represented by these L-O outlets to which you are selling petroleum products, is that correct?

Mr. Paradise: I submit that that is argumentative.

The Court: Well, this is cross examination. All right, go ahead. He has a right to this witness' answer. You may [fol. 2889] answer.

The Witness: Would you repeat your question, please?

(Question read by the reporter.)

A. Yes, the market is there and has been represented by the vast increase in the market resulting from the increase in population in this area.

The Court: But you would call it a preempted market, would you not?

The Witness: Preempted market?

The Court: You know what "preemption" means?

The Witness: I would like to have your interpretation.

The Court: Well, it is just an ordinary word. You have preempted it, just tied it up, the L-O market has tied it up.

The Witness: No. I would say the L-O market was created by the erection and building of our stations. The demand for the products was there, your Honor, and the only way we could participate in that demand for the product would be to erect this outlet to catch some part of it.

By Mr. Dixon:

Q. But you could participate in that demand, could you not, Mr. King, by operating that station directly and selling your petroleum products and gasoline directly to the consumer or purchaser?

A. Do you mean by operating that station as a——

Q. Company-operated outlet.

A. —a company-operated outlet.

[fol. 2890] The Court: Through a company outlet or through an employee.

The Witness: Yes, they could be operated in that manner.

By Mr. Dixon:

Q. But that is not the manner in which the L-O operates?

The Court: Well, that is argumentative.

Mr. Dixon: All right, your Honor.

The Court: You are arguing now. I have to walk in on that situation.

By Mr. Dixon:

Q. And it is a fact, is it not, Mr. King, that this L-O market for gasoline in the year 1950 was in excess of $23,000,000?

The Witness: Read that question.
Mr. Paradise: This is argumentative.
The Court: You have the figures.
The Witness: Read the question, please.

(Question read by the reporter.)

A. I am unable to place any answer on the value of the products sold through the L-O stations.

The Court: Well, I presume the stipulation so states. All right.

By Mr. Dixon:

Q. And that that figure of $23,000,000 that I have just mentioned, assuming that to be the amount of the sales, represents the purchasers of petroleum products from Richfield at the L-O outlets, does it not, Mr. King?
[fol. 2891] A. Well, as I answered you, Mr. Dixon, I am——
Q. Assuming the figures to be that?
A. Oh, assuming your figure to be correct, that would represent the value of Richfield's sales to the operators of Richfield's L-O service stations.
Q. And those sales are generally made on a cash basis at the time of delivery, are they, Mr. King?
A. Yes, a cash basis.
Q. And that is the same term of sale as is enjoyed by the purchaser of gasoline under the 3-C and 337 type of sales contract?
A. Yes. All those dealers buy on a—they pay cash for their deliveries with, I will say—oh, there might be one per cent exceptions to that where a dealer may have some credit.
Q. Now referring further to your arrangement with the operator of the L-O outlet, the lessee, I believe you have called him in your form 146——
I will ask that this be marked for identification as Government's Exhibit No. —

The Clerk: Government's Exhibit 27 marked for identification.

(The document referred to was marked Plaintiff's Exhibit 27 for identification.)

By Mr. Dixon:

Q. I will hand you, Mr. King, what has been marked as [fol. 2892] Government's Exhibit 27 and ask you to examine the same and state to the court whether you find anything therein which refers to any instructions, written instructions or report for written instructions that are to be made by your merchandiser at the time there is a change of lessee at one of the L-O outlets.

A. Well, this form 146, that is a form that is——

Q. That is Government's Exhibit 27.

A. Government's 27 is the form provided our merchandisers when there is a change of operators at an L-O service station. This is simply a check sheet or a reminder sheet for him, to remind him to cover in detail certain items with the outgoing operator and other items with the incoming operator.

Q. Yes.

A. You will notice on here that there is an item covering the actual physical inventory which must be checked, the question of whether certain utility bills have been paid, the TBA program explained, and other items like that. It is really a check list to make sure that everything is thoroughly explained.

Q. All right. Now, that is the report which is filled out and made by the distributor and which is turned in by him to his superior to be made a part of the file in connection with the entire transaction with the L-O operator, is that a fact?

[fol. 2893] A. I believe you possibly use the word "distributor" by mistake.

Q. I do not mean "distributor."

A. This form is made out by our merchandising representative.

Q. Yes. Thank you for the correction.

A. Does that answer your question, sir?

Mr. Dixon: No, I did not get an answer yet.
The Witness: Oh, I am sorry I didn't.
Mr. Dixon: Did he answer, Mr. Reporter?
The Reporter: Not your question.
The Witness: Will you read the question again, please?

(Question read by reporter.)

A. This is part of the file concerning both the outgoing and the incoming operator, as made by our merchandising representative.

Q. I will ask you again, Mr. King, to examine the same and indicate, if you will, please, where the operator is to report to his superior on that form with reference to any instructions given the incoming operator concerning the terms or conditions under which he purchases petroleum products.

A. There is one item here. It says: "Order placed for or lessee supplied with petroleum products." And there is another item here of explanation of recommended prices on merchandise. And I assume that during the discussion on [fol. 2894] those matters that our representative—I say "I assume"—I am sure that our representative at that time acquaints the incoming operator with full information as to where he will place his orders for all petroleum products and the prices which he will pay for them.

Q. And it is, of course, explained to him that he is to acquire such products solely from Richfield, is that correct, at that time?

A. He is told what petroleum products he is to handle at the station, yes, sir.

Q. And those products that he is told he must handle are the Richfield products, are they not?

A. At the L-O station, yes, sir.

Q. And nothing else?

A. Yes, sir.

Q. And that is also true with reference to the TBA items that may be covered under "TBA program explained," is it not?

A. He is told to stock a balanced list of our approved TBA items. However, as I have pointed out in the previous testimony, he does in many instances handle items over and above that list.

The Court: But not competitive items?

The Witness: Yes. At times, many times or at times I have seen competitive items in these stations, too, which [fol. 2895] they may handle in addition to a complete line of our approved items. We prefer, naturally, that they handle only our approved TBA items, but there have been times when they have also handled competitive items in addition.

The Court: All right.

By Mr. Dixon:

Q. I notice also on Government's Exhibit 27 an item No. 5 concerning the incoming lessee. I presume that refers, does it, to the items that are to be taken up with the incoming lessee?

Mr. Paradise: Which items do you refer to?

Mr. Dixon: 5.

Mr. Paradise: We can't hear you over here very well, Mr. Dixon. 5?

Mr. Dixon: Yes.

Q. Is that correct? That item 5 applies to the incoming lessee, does it, Mr. King?

A. Yes, sir.

Q. And he is advised at that time as to his responsibility regarding insurance coverage for fire, theft, public liability, property damage, and workmen's compensation?

A. Yes, sir.

Q. And he is advised, is he not, at that time that that is his responsibility and not the responsibility of Richfield?

A. That is right.

[fol. 2896] Q. Now coming to item 6, lessee is advised as to reporting social security, Federal old age, income, personal property taxes, and filing return qua-terly for state sales tax. That refers, does it not, to the obligation of the operator-lessee and not of Richfield?

A. Yes, sir.

Q. And item 13 provides: "Notify TBA distributor of change of lessee." At the time the incoming lessee is installed, the merchandiser is, under that provision, to advise the TBA distributor, is he not, of that fact?

A. Naturally so, so that he, the TBA distributor, can call on him.

Q. And carry out the Richfield program?
A. And place with him our approved items of TBA.

Mr. Dixon: The Government offers Exhibit 27 into evidence.
The Court: All right, it may be received. Do you want to stop there for a short recess?
Mr. Dixon: Yes, Judge, any time it is all right.

(The document referred to was marked Plaintiff's Exhibit 27 and was received in evidence.)

The Court: All right. You may step down. I did want to tell you that when we adjourn today we will follow the practice of adjourning until Tuesday. Today is Friday, isn't it?
Mr. Paradise: Yes, sir.
[fol. 2897] The Court: I just thought I would let you know. I have a lot of things to do Monday, a short trial and two other trials, so I will be very busy.

(Short recess.)

[fol. 2898] The Court: All right, gentlemen.

By Mr. Dixon:

Q. Mr. King, referring to these Form 542 leases with the operator of the L-O outlets, a minimum per month's rental is always provided for in that lease with the operator, is it not?
A. Yes, sir.
A. A minimum at a gallonage rate, yes.
Q. I mean a specified, liquidated minimum amount is always provided for in that form lease?
A. Yes, sir.
Q. Now, that amount is always collected, is it not, when the incoming lessee's property is turned over to him?
A. You say that amount—your question is, is that amount selected at that time?
Q. No; no. The amount specified in your rental Form 542 as the monthly rent is always collected in advance from the incoming lessee, is it not, at the time the premises are turned over to him?
A. Yes, sir.

Q. Now, I believe you testified that you made some reductions in that minimum rental to some lessees under your Form 542 at various times; is that correct?

A. Yes, we have made reductions.

Q. And in some instances, I believe you testified you made them even as low as down to $1 per month; is that correct?

[fol. 2899] A. Yes, sir.

Q. You also testified that your rental that you got from the lessee under the Form 542 was generally based on one cent a gallon for all gasoline sold at the station; that is a fact, too, is it not?

A. That is the maximum rate that we collect, yes.

Q. Now, these reductions, have they been the practice of the company since the termination of the last war?

A. Yes, and even prior to that.

Q. It is also a fact in some instances, is it not, that there have been increases in the minimum rentals to be paid by the lessee under the Form 542 type of lease?

A. There have been increases, but not to exceed the rate of one cent per gallon, unless, as I have heretofore testified, there are some extraordinary facilities that have a certain value.

Q. Did you ever have any L-O outlets that did not sell more than 100 gallons of gasoline a month?

A. Well, I am afraid if they didn't sell any more than that, Mr. Dixon, that there would be a change of operator or a closed station.

Q. But you did make reductions voluntarily, as I understand it, to some lessees under the 542 lease to as low as $1 a month minimum rental; is that correct?

A. Oh, yes. Yes, indeed.

[fol. 2900] Q. And that minimum rental was also the maximum rental under those circumstances, was it not?

A. As long as we made that concession, yes.

Q. And the purpose of making that reduction to $1 minimum-maximum rental per month was to maintain that outlet, that L-O outlet, as a market for your petroleum products, was it not?

A. That is right, and to enable the operator, to give him time in order to develop or build a business.

Q. As you have expressed, to enable the L-O operator to

build up the business, that is a business of selling petroleum products which he might buy from you and sell to the consuming public through that L-O outlet?

A. Yes. It might be a brand new station, and we would throw in four or five merchandisers in the neighborhood to develop and solicit business for that station. Business does not come in a rush, you know. You do not develop the potential of a station within three, or four, or five, or six, or sometimes twelve months of time after it is opened, so that is why we make those concessions.

Q. I believe you also testified with reference to the L-O lease, that it was your view that you were turning over a valuable piece of property to the lessee of that outlet, under the 542 form of lease; is that correct?

A. Yes, I would consider it a valuable piece of property.

[fol. 2901] Q. It is a fact, is it not, Mr. King, that the 542 lease contains many provisions in writing which make certain that the lessee under that Form 542 shall maintain and keep that property in good condition and repair?

A. The lease so states. It has been our practice, that is, with the exception of normal wear and tear of the premises, you understand, and we would hold him responsible for damages to the property if abuse was used on the equipment or negligence in the handling of it.

Q. But you feel it is the policy of the company that those provisions do not adequately protect the premises or the interests of the company in the property which you turn over to the lessee?

A. That provision is to require the operator to operate and handle our property with due diligence, it is notice to him that if he abuses the property through his negligence, or otherwise, why, the repairs, and so forth,—he would be subject to the expense of the repairs.

Q. That is all provided for in the written provisions of the lease, Form 542, is it not, Mr. King?

A. There is a provision that requires he shall maintain the property in a good state of repair.

Q. Now, I believe you also testified that the L-O operator has no investment in any of the fixed assets of any of the L-O type of outlets, concerning which you have entered into [fol. 2902] a form of lease, 542; is that correct, Mr. King?

A. That is correct. He has no investment in any equipment attached to the property, affixed to the property, if that is what you mean, sir.

Q. It is a fact, is it not, Mr. King, that the lessee of such outlet has on some occasions made investments in the fixed assets of the property covered by one of the 542 leases?

A. There may have been exceptions, but very few exceptions. I have known of a few instances where the dealer has at his expense installed some cupboards or some shelving, something of that sort, but such, if you want to call them that, are very, very minor in either amount or value. But wherever anything is needed for the successful operation of that station in the way of fixed equipment, why, the company provides it.

Q. Are you familiar with the testimony given in this court room by Mr. Mills, who was one of the operators at one of these outlets covered by a 542 lease?

A. No, I am not familiar with his testimony.

Q. Are you familiar with the testimony of——

The Court: Are you talking about the man who testified concerning——

Mr. Dixon: Concerning the electrical outlets.

The Court: That wouldn't work?

[fol. 2903] Mr. Dixon: And he spent $2500.

The Court: And he spent $2500 to fix it because, he said, they wouldn't fix it.

Mr. Dixon: Yes, sir.

Mr. Paradise: Wasn't it his testimony that that was expended prior to 1937, before this company came into existence? I think that is Mr. Mills' testimony.

The Witness: If you will identify——

The Court: The only other testimony I remember is that of the man who put in a new type of hoist, a fellow who went into bankruptcy. Who was that?

Mr. Dixon: That was Mr. DeLonge.

The Court: That was Mr. DeLonge. He said he had such a tough time, and that he still owed $180, I think, on the hoist, which was washed out in the bankruptcy.

Mr. Dixon: May the record show with reference to Mr. Mills' testimony, on page 620, that this incident occurred in 1943.

The Witness: What Mills is that, Mr. Dixon?

Mr. Dixon: Mr. Harlan Mills, Harlan G. Mills.

The Witness: Well, I would like to, and I can enlarge upon that if the court will permit me to.

The Court: Go ahead.

The Witness: Mr. Mills——

By Mr. Dixon:

Q. First of all, are you familiar with that situation, Mr. [fol. 2904] King?

A. Yes, I have known Mr. Mills for——

Mr. DeMartini: I think you are mistaken about the fact that he put it in in 1943. Let's get the record straight.

The Court: All right.

The Witness: Yes. I have known Mr. Mills for many years, probably 15 years or more. We gave him permission, —we refused to do it, to make this installation, but we gave him permission to install an electric generating plant in the station, which would enable him to reduce his electric light expense. In other words he could generate his own power cheaper than he could buy it, and he originally put that equipment in on his own initiative.

It was certainly an unusual item of equipment, and I don't know of another service station that has its own electric light or power plant, unless it might be something way back in the mountains where there is no electric power.

The Court: All right.

By Mr. Dixon:

Q. In any event, did you regard that as an investment by the lessee under your Form 542 in a fixed asset?

A. Why, I will admit it is an investment by the lessee in a fixed asset, but I will also state it is a very unusual and extreme situation.

Q. Are you familiar with any of the circumstances of the [fol. 2905] testimony of Mr. DeLonge concerning the installation of a lift at the property which he leased from your company on a Form 542?

A. I am not familiar with his testimony, other than what Mr. DeMartini has told me about it.

Q. Would you regard a lift, that is, something that is used to raise an automobile up so that it may be greased by the operator of the outlet as a necessary part of the equipment of any service station serving the public?

A. Yes, it is a necessary piece of equipment, and in all L-O stations we provide that equipment. Now, I don't know the circumstances in that instance. It is quite—I can only say or assume that the operator wanted an additional piece of equipment, or something that was, in our opinion, not necessary, and went ahead on his own and installed it.

Q. In any event, as I understand it, you are not familiar with that situation?

A. I am not intimately familiar with that situation.

Q. All right. I believe you testified that you would, as you put it, terminate any operator under a Form 542 lease that didn't conform to your procedure to make him a more successful operator; is that correct?

A. Yes, we would; that is, if he did not conform to our instructions after repeated efforts to have him, why, we would consider that sufficient grounds to cancel his lease.

[fol. 2906] Q. You regard a successful operator, I presume, as one who sells or buys from Richfield an increasing number of petroleum products and automotive accessories under the L-O type of arrangement?

A. As the result of taking full advantage of the facilities which we have provided, and realizing the potential that exists at that station, I would consider him a good operator.

Q. Well, if the lessee or operator of any one of your L-O outlets under Form 542 could make more money for himself as an operator in buying competitive TBA products, for example, from sources other than through the Richfield distributor of such products, you would not regard such an operator as a successful operator for Richfield, would you?

Mr. Paradise: I object to that as argumentative.

The Court: That is argumentative. It is quite evident that the measure of success is determined by the amount of Richfield products, either produced by them or recommended by them that he sells, as to whether he built up the station. It is quite evident that every one of the operators who testified here felt that he had a personal interest in building up the business. They were proud to show the in-

crease in gallonage, and everything else. But the company, of course, insists that notwithstanding that there had to be strict compliance with the requirements as to petroleum [fol. 2907] products being limited to their products, and, also, as to TBA recommended products, so the rest is argument.

You know, they have a motion picture, or, rather, they have a program called "Queen For A Day." They had some lady come up here in court, and I don't know why, but I presume I must have been handling some case that had a popular appeal. When she was asked what she wanted to do, she said she wanted to visit my court room. So I put her on the bench beside me. It happened that her husband had been a marshal in olden days in some eastern court. So this L-O operator was a King For A Day, or an Operator For A Day. In other words, he had grave responsibilities, but they could be terminated on 24 hours' notice.
[fol. 2908] So the question for the court to determine will ultimately be what kind of a relationship that was.

By Mr. Dixon:

Q. Now, Mr. King, I believe you testified that the 3-C type of sales contract entered into with a lessee of the property leased by the operator to Richfield and by Richfield leased back to the operator contained a provision in 1937 calling for a maximum and minimum of petroleum products to be purchased by the operator of that type of outlet, is that correct?

A. No, that is not correct, Mr. Dixon.

Q. Directing your attention to Government's Exhibit 3-B——

The Court: Are you switching to a new type of station?

Mr. Dixon: Yes, your Honor.

The Court: Which one is that?

Mr. Dixon: That is 2-B, 3-C, and 337.

The Court: All right. What is the number of your exhibit?

Mr. Dixon: No. 3-B.

The Witness: Mr. Dixon, you referred to a 3-C. Perhaps you are probably thinking of 2-B.

Mr. Dixon: Yes.
The Witness: You mentioned it as 3-C.

By Mr. Dixon:

Q. I will hand you Government's Exhibit 3-B and ask you whether paragraph 1 thereof contains such a minimum-maximum provision.

[fol. 2909] Mr. DeMartini: What is the print date of that, Mr. Dixon?
Mr. Dixon: 11-37, counsel.
Mr. DeMartini: Thank you.
Mr. Paradise: Did your question relate to 1947?
Mr. Dixon: No, I did not say '47. I am sorry if I did.
The Witness: What is your question, now?

(Record read by the reporter)

A. May I retract my answer? That is correct, and this document contains what we call the 2-B proposition at that time, Mr. Dixon, rather than 3-C. But in effect it is the same kind of a proposition, a lease and sublease.
The Court: All right.

By Mr. Dixon:

Q. I believe you also testified as to the manner in which that maximum and minimum figure was determined, and stated that it was determined on the basis of 85 per cent of the estimated purchases or sales of that outlet, is that correct, Mr. King?
A. No, that is not exactly correct, Mr. Dixon. I would like to first say that that basis of computing the quantity to be inserted in the contract was not used back in 1937, if you are referring to this document we just discussed. That formula was just adopted, as I have testified here, about the middle of 1948, and is not based upon the dealer's estimated sales but is 75 per cent of his known or his past sales [fol. 2910] as determined by his records.
Q. Will you state to the court, then, Mr. King, how the maximum and minimum amounts which were specified in Government's Exhibit 3-B were determined?
A. That is the document in use in 1937?

Q. That is right.

A. That is sometime ago, but it is my recollection that the minimums and the maximums were established by mutual agreement between a dealer and Richfield, a minimum amount which he would be required to buy and a maximum amount which the company would be required to deliver.

Q. I believe you also testified that around about 1938 or 1939, when you were in charge of the southern division, that the policy of the company was to cease to supply or to eliminate any sales made to so-called split pump stations, is that correct?

A. Yes. Following instructions, we withdrew from the split pump stations we were serving at that time.

Q. In other words, if the account which you were then serving was a split pump outlet and it had a sales contract of the type represented by Government's — 3-B, it was the policy of Richfield to cancel that contract unless the operator of the 3-C outlet with whom you had such a sales contract, 3-B, agreed to purchase all of his requirements of gasoline and petroleum products from Richfield?

[fol. 2911] A. I can't recall, Mr. Dixon, our having that form of contract that we are speaking about with any split pump account.

Q. But in any event after the Dinkins memoranda, Government's Exhibit 9, Richfield did not sell any outlet to which it did not supply 100 per cent of the gasoline requirements, is that a fact, Mr. King?

A. It is true that we withdrew——

The Court: What is the number of that memo exhibit?

Mr. Dixon: Government's Exhibit 9, your Honor.

The Court: And there is a letter that goes with it, isn't there?

Mr. Dixon: Yes, 9-A.

The Court: 9-A. I mean I want to make a note.

The Witness: Would you state the question again, please?

(Question read by the reporter.)

A. As I have testified, at the time of the letter that you refer to we had approximately 20 such split pumps ac-

counts. And I do not recall that we have sold any so-called split pumps accounts since that time. As I have testified heretofore, when an account ceases or stops purchasing our products, why, he throws us out completely in favor of some other competitor.

By Mr. Dixon:

Q. And that is true, is it not, Mr. King, regardless of what provisions may be contained in the sales contract [fol. 2912] between Richfield and the purchaser of petroleum products under Government's forms 3-B or Government's Exhibits, rather 4-B, 4-C, Government's Exhibit 5, Government's Exhibit- 5-D, and 5-G?

Mr. Paradise: Oh, I ask that those exhibits be presented to the witness before he — required to answer that question.

Mr. Dixon: That is a very fair request counsel, and I just wanted to get——

The Court: You have included a large number of exhibits.

Mr. Dixon: I might say for the record, your Honor, that they comprise the form of written sales contracts which the Government has introduced as representative exhibits of the type of sales contract entered into by the defendant and purchaser of petroleum products from Richfield under the 2-B, 3-C, and 337 type of sales contracts.

Mr. Paradise: The objection relates primarily to the point of time. I think the witness' attention should be directed to the time as well as to the exhibits.

The Court: And show him the exhibits so he may look at them.

Mr. Dixon: 3-B, 4-B, 4-C, 5, 5-D, and 5-G.

(Mr. Dixon and witness conferring.)

Mr. Paradise: Is this discussion for the record?

Mr. Dixon: No. This is off the record. I am helping the witness.

[fol. 2913] Mr. Paradise: Can I hear what help the witness is getting?

Mr. DeMartini: May we have the question read before the witness answers it?

The Court: I think the witness will probably want it read.

The Witness: Yes. Would you read the question, please?

The Reporter: The question is predicated upon the previous question and answer.

(Record read by the reporter.)

By Mr. Dixon:

Q. Do you understand my question, Mr. King?

A. I think so. Certain of these contracts, namely, the 3-B and the 4——

Mr. Dixon: I do not mean to interrupt.

The Court: Just a minute. Let him finish what he wants to say. Let him finish.

A. And the 4-C and the 5 and the 5-D and the 5-G all contain minimum and maximum quantity clauses, whereas the 4-B which was used in the original 3-C proposition called for the buyer's entire requirements. As I have testified, we have had numerous dealers break these contracts and throw us out in favor of a competitior, and when we have been thrown out, we have been thrown out bag and baggage. I do not recall that we have had any instance where a dealer [fol. 2914] under one of these contracts elected to install pumps of a competitor's gasoline while at the same time purchasing our gasoline.

The Court: In other words, regardless of what became of them later on, he was handling your gasoline?

The Witness: Your Honor, he either handled our gasoline or he threw us out.

The Court: Or he threw you out?

The Witness: Yes.

The Court: But you threw yourself out.

The Witness: We were the people that were thrown out. In other words, if there is any dissatisfaction, it is our experience they do not throw us out part ways, we just stop doing business. We are told to get out.

The Court: In other words, you carried out the policy for the reasons you gave us yesterday of not having split pumps, isn't that true?

The Witness: As I told you, your Honor, with our reasons for not soliciting that split pump business——

The Court: I am not going any further into the reasons. I am talking about the ultimate fact.

The Witness: Yes.

The Court: It was not profitable and you did not want it.

The Witness: That is true.

[fol. 2915] The Court: Then any of the contracts you entered into after that aimed to achieve that object, but you did not always achieve it. You shot at it, anyway.

The Witness: Sure, that we proposed to sell them all of the gasoline they wanted to buy, but our contracts have not required them to buy all our petroleum products. We hope that we will be good enough sales people that he will like us well enough that he will buy all of his gasoline from us.

By Mr. Dixon:

Q. In the sales contract forms that I have referred to you mentioned the fact that one of them contained a specific requirement to the effect that the purchaser would buy all of his petroleum requirements, namely, Government's Exhibit 4-B which was entered into in November of 1945. That was done at the time, was it, Mr. King, that you were revising or rearranging the 3-C type of arrangement that you may have referred to?

A. Yes. That document No. 4-B was part of the 3-C proposition when it was first placed into operation on or about 1945. I believe, as I testified this morning or during the day, this type of contract is only used where the company has some investment in the property, and at that time we thought it advisable to call for the entire requirements as this document provides. But, as I have also testified, at a later date all such contracts in existence except, I think four, were mutually amended to [fol. 2916] require only a minimum quantity or a fixed quantity of gasoline on the basis of the formula that I have heretofore described.

[fols. 2917-2920] Q. The 3-C type of arrangement was one where the operator owns or controls the underlying title to the station, and he leases that to Richfield, and then as a part of the same transaction Richfield at the same time leases it back to the operator-lessor, and enters into this type of sales contract, 4-D, that we have just referred to?

A. Yes, sir.

The Court: If this is a good stopping point, we might adjourn. Is it a good stopping point?

Mr. Dixon: Yes, it is, Judge.

The Court: It is nearly 5:00 o'clock, and I think we will have Mr. King with us. He is not in a hurry to go back to Spokane or Seattle.

The Witness: It is a pleasure to be here, your Honor.

The Court: So we might as well take our adjournment at the present time. All right, Mr. King.

The Witness: Thank you.

The Court: Gentlemen, as I have already informed you, we will adjourn and this case will be continued until Tuesday. We will adjourn until Monday, but the case will be continued until Tuesday morning at 10:00 o'clock. The court will adjourn until the usual time on Monday.

(Whereupon, at 4:55 o'clock p. m., Friday, May 25, 1951, an adjournment was taken until 10:00 o'clock a. m., Tuesday, May 29, 1951.)

[fol. 2921] Tuesday, May 29, 1951. 10:00 A. M.

The Court: All right, gentlemen.

Mr. Dixon: Mr. King, would you resume the stand, please?

William G. King, called as a witness on behalf of the defendant, having been previously sworn, resumed and testified further as follows:

Cross examination (Continued).

By Mr. Dixon:

Q. When we adjourned last Friday, Mr. King, I believe we had started to go into the 3-C type of arrangement. That is one, is it not, where the operator owns or controls the underlying title to the station outlet, and he leases that to Richfield, and as a part of the same transaction Richfield at the same time subleases it back to the operator-lessor, and he enters into a sales contract of the type of Government's Exhibit 4-C at that same time. Now, these leases from the lessor-operator to Richfield and from Rich-

field to the lessor-operator, as lessee, are generally for a long period of time, are they not, Mr. King?

A. Could you change your question to describe these men as dealers, instead of operators? I believe that is the terminology we used all the way through.

[fol. 2922] Q. I would be very glad to take the suggestion, if you would rather call them operators.

A. I would rather call them dealers.

Q. I mean dealers.

A. In answer to your question, the lease between Richfield and the dealer is for a long period, yes; up to 10 years.

Q. In some instances they are for even longer than that period of time, are they not?

A. I know of no instance where we have written any such proposition in excess of 10 years.

Q. Now, I believe at the same time this lease and sublease are entered into, the sales contract is also entered into, as you have described. Now, directing your attention to Government's Exhibit 4-B, which is the operator's sales contract, or the dealer's sales contract, as you call it, that is entered into at this time, and further directing your attention to paragraph 1 thereof, that paragraph requires, does it not, that the dealer or buyer purchase all of his petroleum products that he sells at the outlet leased from Richfield for the period of the lease?

A. Yes, this particular contract required the operator to purchase his entire requirements. However, this particular contract was used prior to 1948, and has not been used since that time.

[fol. 2923] Q. Now, I believe you stated as one of the reasons for this requirement in paragraph 1 the Richfield Company had some investments in the property leased; is that correct?

A. That is generally true with this type of agreement.

Q. What other reason, if any, do you have for the insertion of this paragraph 1 in Government's Exhibit 4-B?

A. I would have no other reason, other than, as I believe I have previously testified, that we felt that in this type of transaction, where competition has forced us to make some investment in the property, that this type of paper was a greater protection to us, to our investment.

Q. And that was in addition to the protective provisions which were contained in the various paragraphs and provisions of the dealer's lease, Government's Exhibit 4-A?

A. Well, I think this agreement is self-explanatory, Mr. Dixon.

Q. Could you state, Mr. King, generally, what the nature of the investment was that Richfield had in these outlets represented by the 3-C type of arrangement?

A. The investment could have been the loan of various pieces of equipment, pumps, tanks, hoists, compressors, any of the usual equipment that goes into the operation of the station. It could have included additions and improvements to the property, to the structures. It might have included an outright loan to the dealer of cash.

[fol. 2924] Q. And it is a fact, is it not, Mr. King, that on the termination of the lease from the operator to Richfield, Government's Exhibit 4, that any improvements of the type that you have described in the nature of buildings which Richfield might place upon the property leased to Richfield and subleased back to the dealer can be removed, is it not?

Mr. Paradise: I think if counsel is asking for the interpretation of an agreement he should call the witness' attention to the particular paragraph he has in mind, if he is permitted to ask it at all. I have no objection, but I think in fairness to the witness that should be done.

The Court: If the witness cannot answer in that manner, I will have the question reframed. He seems to be able to answer these questions and I do not anticipate any exception as to this one. You can answer that question, Mr. King, the way it is worded?

The Witness: Your Honor, I would like to have the question read.

The Court: All right.

The Witness: Would you read it, please?

(Question read by the reporter.)

A. I would like to point out in answer to your question that where the improvements are of a permanent nature affixed to the property, such as a structural improvement, why, we could not and would not remove them. Now, our

agreements sometimes provide that the additional equip-
[fol. 2925] ment or that the equipment that we furnish under this contract will become the property of the dealer on the expiration of the contract, and in other cases the equipment is removable by Richfield upon termination of the contract.

By Mr. Dixon:

Q. Directing your attention to paragraph 5 of Government's Exhibit 4, it is the policy, is it not, of Richfield to either remove any buildings or other improvements that it may have placed upon the premises described in the lease at the termination of the lease, or to sell them to the dealer-lessee?

A. No. It all depends upon the terms of the agreement as entered into. In some instances we have made these improvements which will be self-amortized over the term of the contract, and in other cases, as I have pointed out, the equipment may be freely removable by Richfield at the end of the contract. It all depends what the basis of the original agreement with the dealer.

Q. So that the type of equipment and property that you have described is what you have been referring to as the Richfield investment made under the 3-C arrangement, is that correct?

A. That would be part of it. That would be part of the investment, yes, sir.

Q. Does Richfield ever operate or take actual possession
[fol. 2926] of the property leased under the form Government's Exhibit 4?

A. Richfield has never, to my knowledge, taken over the operation of any station which was contracted under our 3-C proposition.

Q. So that actually there is never any change of possession of the premises which may be leased under Government's Exhibits 4 or 4-A from the dealer to Richfield and from Richfield back to the dealer, is there, Mr. King?

A. The original dealer, the lessor, could sell his property and——

Q. If I may interrupt? I mean at the time that the leases are entered into, Government's Exhibits 4 and 4-A?

The Witness: Read the question, please.

(Question read by the reporter.)

A. That is right.

Q. Directing your attention to paragraph 3 of Government's Exhibit 4-A, the language: "That the lessee shall make no change, alteration or substitution in the demised premises, improvements, buildings, fixtures and equipment, except such as may be necessary to enable lessee to continue business on said premises, unless the consent in writing of lessor be first obtained," would you state to the court what the purpose of that particular provision is?

Mr. Paradise: Well, now——

By Mr. Dixon:

Q. If you know?

[fol. 2927] Mr. Paradise: My objection relates to the confusion in point of time. The question as framed is "what is the purpose," what presently is the purpose of this provision.

Mr. Dixon: I did not ask that, counsel.

Mr. Paradise: What?

Mr. Dixon: I did not ask that, counsel. I asked this witness, as I have been asking him other questions, what the purpose of that provision is, if he knows.

Mr. Paradise: Well, that is what I say. The objection relates to the question of point of time. Your question relates to the present time.

The Court: All right. Read the question, please.

(Record read by the reporter.)

The Court: The last question is the only question pending. Go ahead.

Mr. Dixon: Can you answer that?

A. I do not know, Mr. Dixon.

Q. Handing you Government's Exhibit 4 and directing your attention to paragraph 4 therein, I direct your attention to the words "automobile accessories." I will ask you, Mr. King, if that provision was first inserted in the

lease from the dealer to Richfield under the 3-C type of arrangement at that time, namely, in November 1945?

A. Well, this paragraph 4 that you refer to appears in the Form 362 as of print date of 11-45, or your Exhibit No. 4.

[fol. 2928] Q. And any reference to the use of the property leased by the lessor to Richfield for carrying on the business of selling automotive accessories was not contained in that form of lease from the dealer to Richfield prior to that time, was it?

Mr. DeMartini: I submit that assumes something not in evidence, or contrary to the evidence, because I believe this is the first print of this instrument.

Mr. Dixon: I think my question is clear.

The Court: All right.

By Mr. Dixon:

Q. If you know Mr. King?

A. Yes. Just a minute, please. Will you read that question?

(The question was read.)

A. Well, prior to this time, Mr. Dixon, I don't know of any earlier printing of this particular form, or this particular contract. In other words, I think this document speaks for itself. It was in use in 1945, but it is no longer in use.

Q. That form of lease is still in use, is it not, Mr. King, and has been in use since November, 1945?

A. That is the earliest time that it was used.

Q. Yes.

A. I believe that the lease—I would like to examine a later lease, to see if that provision, or that paragraph, has [fol. 2929] not been altered.

Q. My original question, Mr. King, was whether you knew whether that provision that I have referred to was contained in any other prior forms of leases from the dealer to Richfield under the 3-C or 2-B type of arrangement.

A. Well, I have no knowledge other than this particular agreement in front of me now, the 2-B arrangement has

been long since discarded, and I just don't recall what was in that.

Q. Can you state to the court what the purpose of that particular reference to the use of the property for the business of selling automotive accessories was?

A. I think it was the intent of that paragraph to limit the use of this property to that of an automobile service station.

Q. And to provide also that automotive accessories would be sold on the premises leased; isn't that a fact, Mr. King?

A. Well, that would naturally go along with the operation of the property as an automobile service station, but does not necessarily imply that it would control the sale of Richfield's automotive accessories.

Q. That provision was inserted in this form at about the same time as Richfield was instituting or embarking on an intensive TBA sales program, was it not?

[fol. 2930] A. Well, Richfield had embarked on its TBA sales program long before this time, Mr. Dixon.

Q. I am speaking now about the end of 1945, when this form first appeared in this type of lease.

A. Well, we were developing the sale of automotive accessories at that time, if that answers your question.

Q. Now, I believe you testified that the exclusive requirements provision relating to petroleum products, as set forth in Government's Exhibit 4-B, was eliminated from the sales contract, 4-C, which was the type of sales contract used in connection with the 3-C arrangement in August of 1948, is that correct?

A. Yes, sir.

Q. And at that time you issued instructions to all of your members of your organization who were in contact with the dealers under the 3-C arrangement to change the dealer to a new type of contract, namely, Exhibit 4-C; is that correct?

A. Yes, sir.

Q. Now, did you give any written instructions to your staff under your supervision concerning the manner and method of effecting that change?

A. I do not recall just how the instructions were given,

either in writing or orally, but they were conveyed to the organization as to the manner in which we desired to amend [fol. 2931] the existing 3-C proposition with our dealers.

Q. Do you know as a *a* fact whether any written instructions were given and circularized among your staff, who were to contact the 3-C dealers with whom contracts of the type 4-B were then in effect?

A. I do not recall the exact manner in which the instructions were issued.

Q. It is a fact, is it not, Mr. King, that regardless of the provisions in contracts of the type, 4-B and 4-C, relating to the purchase of petroleum products from Richfield, that the dealer or purchaser of those products from Richfield purchased in fact his entire requirements of gasoline and petroleum products while those contracts were in effect, did he not?

A. Generally speaking, the dealers under the 3-C proposition have purchased their entire requirements of gasoline, even though they are under no obligation to do so under the terms of that contract.

Q. And you know of no instance, to your knowledge, where they did not do so, do you?

A. I know of instances where they have abrogated the contract.

Q. My question, Mr. King, relates to the purchases made as long as the sales contract was in effect between Richfield and the dealer.

[fol. 2932] A. I do not know of any instances where they have purchased another supplier's gasoline while the contract was in effect. As I have pointed out, there are numerous instances, though, where they have entirely abrogated the contract.

Q. Now, it is a fact, is it not, Mr. King, that your salesmen made visits at least once a week to the dealers under the 3-C type of arrangement?

A. Our salesmen have no set schedule, but I would say that, generally speaking, they call on these dealers possibly three or four times a month, all in the interests of retaining their good will.

Q. It is a fact, is it not, that one of the purposes of those

weekly visits is to have the salesmen visit the station and survey the products being handled at the station?

A. No, that is not the purpose of the salesman's visit.

Q. Is that one of the purposes of the visit?

A. Well, you must understand what a salesman's duties are. He is out—he is charged with the responsibility of selling the company's products.

[fol. 2933] Q. I understand that, Mr. King.

A. And it would be only natural that if he finds that the dealer is buying competitive products, he is going to endeavor to sell them on the merits of our products. But in answer to your question, it is quite possible in calling on the account he is going to take stock of what the competitors are able to sell him and endeavor to displace those products, if he can, through interesting him in the merits of our products.

Q. And, as I believe you call it, to concentrate on the handling 100 per cent of Richfield's products by such dealers?

A. Well, we would be delighted if the dealer would see fit to handle our products entirely. Naturally, that is the objective of our salesmen from the sales standpoint, but certainly it is entirely up to the dealer to do so. In other words, the dealer, he is the last word in that respect as to whether or not he is going to buy our products or somebody else's products.

Q. Now, directing your attention to the 337 type of arrangement, that is the one, is it not, where the dealer enters into a sales contract and usually enters into a painting agreement?

A. Well, as I have testified before, he may or may not enter into the paint agreement concurrently with the [fol. 2934] writing or entering into a 337 contract.

Q. Directing your attention to Government's Exhibits 5-C and 5-E, I will further direct your attention to paragraph 1 of Government's 5-C and ask you what the purpose of that provision was, if you know?

A. I believe I have previously answered you, Mr. Dixon, that I do not know the purpose of that provision.

Q. Now, comparing paragraph 1 of Government's Exhibit 5-C with paragraph 1 of Government's Exhibit 5-E

there is a difference between the two paragraphs, is there not?

A. Yes, sir.

Q. And what is that difference as you compare them?

Mr. Paradise: Do you want him to read it into the record?

A. Well, the paragraph 1—you are asking me to explain that?

Mr. Dixon: Yes.

A. Paragraph 1 in Exhibit 5-C requires the dealer to remove from the surface of the station to be painted all signs and insignia, and upon completion of the painting of the station by Richfield shall not place upon or over the painted surfaces any advertising sign, trade-mark, insignia, or any other matter without first securing the consent and approval of Richfield.

In paragraph 1 of Exhibit 5-E it simply provides that the dealer shall remove from the surface of the station [fol. 2935] which is to be painted all signs, insignia and obstructions so that the obligations of Richfield hereunder may be performed with a minimum of hindrance.

Q. Exhibit 5-E, I believe, was adopted in August of 1948, was it, Mr. King?

A. Yes, sir.

Q. As you have stated the previous provision with reference to the dealer putting signs on his property without the approval of Richfield, as set forth in paragraph 1 of Government's Exhibit 5-C, was removed or at least does not appear in paragraph 1 of 5-E?

Mr. Paradise: I submit that that is a distortion of the witness' testimony. He did not say anything about removing signs from the property. He talked about from the painted surfaces of the building.

Mr. Dixon: My question, counsel, was a question. I did not say the witness accepted anything, if you read my question.

The Court: Go ahead, you may answer.

The Witness: Read the question, please.

(Question read by the reporter.)

A. The paragraph 1 of 5-C referred to only removal of signs on that part of the service station which was to be

painted. It does not refer to signs that might be placed anywhere else on the property.

[fol. 2936] Q. You have just referred to 5-E, Mr. King?

A. I am referring to the original, or the provision in paragraph 1 in 5-C.

Q. All right.

A. Which called for the removal of signs or the restriction upon replacing signs upon the structure that was actually painted by Richfield. It does not prohibit the——

Q. Without first procuring the consent and approval of Richfield?

A. Yes, upon the area that was painted by Richfield. It did not prohibit the dealer from putting up signs anywhere else.

Q. Now, that provision does not, as you have indicated, appear in paragraph 1 of 5-E?

A. No.

Q. Now, can you state to the court what the reason was, if you know, for that change or elimination?

A. I do not know the reason for it, for the change.

Q. Did you give any instructions to your salesmen who were negotiating 3-C deals with reference to the change in this provision of paragraph 5-E as against the provision which previously appeared in paragraph 5-C?

A. Well, no instructions were necessary. The document speaks for itself as far as our representatives are concerned. And in the next place, the painting agreement [fol. 2937] that we refer to here, 5-C and 5-E, is not used, Mr. Dixon, in connection with the 3-C proposition.

Q. Just what is 5-C used with, Mr. King?

A. 5-C when in use or when in effect——

Q. I beg your pardon. Did you say 5-C was not used in connection with the painting or 3-C deal?

A. Yes, sir.

Q. Yes, I understand that. That was under the 2-B deal.

A. Well, that is quite possibly so.

Q. And the Government's 5-C was not used after 5-E was. That is a fact, is it not?

A. That is right. 5-E——

Q. So it was—pardon me.

A. 5-E superseded it.

Q. But prior to the use of 5-E, 5-C was used when there was any painting of any station to be done, was it not, Mr. King?

A. Under the Form 337 contract. Your question referred to its use in connection with the 3-C proposition.

Q. I am sorry. I am glad you corrected me. We are talking about the 337 type of arrangement.

The Court: We are getting all mixed up on the alphabetical terminology.

Mr. Dixon: I believe the record is now clear, your Honor.

[fol. 2938] The Court: Well, let us not argue about it. It is evident there is some confusion here. If you want to straighten it out, all right. I will give you ample opportunity to argue the variations, etc., at the proper time.

By Mr. Dixon:

Q. Mr. King, I believe you testified that Richfield——

The Court: There is one question occurred to me at the time you asked him. It slipped my mind.

Mr. Dixon: Pardon me, your Honor. Go ahead.

The Court: There was read to you the portion of the contract which has been providing for signs. It used the language "in order to prevent". What was the wording that was used? In order not to interfere with the performance of the contract. Do you remember that clause which forbids signs? You were reading from the contract.

The Witness: Yes, sir.

The Court: And that is the reason it is given. To what does that refer? What portion of the contract does it refer to?

A. I was reading from—in both instances I was reading a paragraph from the two different forms of painting agreement that we have used.

The Court: Yes. But what performance does it speak of? Does it relate only to performance of products, the use of petroleum products?

[fol. 2939] The Witness: No.

The Court: Or does it relate to others? What does it refer to?

The Witness: In the Exhibit 5-C it provides that the

dealer shall remove from the surface of the station which is to be painted all insignia and other signs, and shall not place back upon the painted surfaces any advertising signs, trade-marks, etc., without first procuring the consent and approval of Richfield.

The Court: Well, that refers, of course, to signs advertising anything, not only petroleum products.

The Witness: Oh, yes. It may be Coca Cola, Pepsi Cola, tobacco or anything.

The Court: That is right. And then there is another clause I thought you read that followed that. What did it say? In order to—did you insert that?

The Witness: No. The next clause that I read, sir, was in Exhibit 5-E, and that is the latest agreement and the one now in use. It says: The dealer shall remove from the surfaces of the service station which is to be painted—from the surface of the service station which is to be painted.

The Court: That is right. I understand that.

The Witness: All signs, insignia and obstructions so that the obligations of Richfield hereunder—that is the obligation to paint the station—may be performed with a minimum of hindrance.

[fol. 2940] The Court: Oh, I see. That is my error. I thought that the qualifying clause referred to the obligation of the dealer, instead of the obligation of Richfield. That is my error. Go ahead.

By Mr. Dixon:

Q. Directing your attention to Government's Exhibit 5-G, Mr. King, paragraph 1 thereof, I believe you testified that the minimum amount specified in paragraph 1 of Exhibit 5-D was determined by your estimating at least 75 per cent of the gallonage requirements of that station; is that correct?

A. That is not exactly correct, Mr. Dixon. It was not an estimate of the gallonage. Our representatives were instructed to insert in there, in the minimum a figure which represented originally 85 per cent and at a later date 75 per cent of the dealer's known past sales. It was only estimated in the event it was a brand new station with no previous sales experience.

Q. Thank you. Now, when was the figure reduced from 85 per cent to 75 per cent for contracts such as Exhibit 5-D?

A. The percentage figure of 85 per cent was reduced to 75 per cent in the early part of 1950.

Q. What was the reason for that reduction, Mr. King?

A. I issued those instructions to our organization upon the advice of our legal department.

Q. It is a fact, is it not, Mr. King, that regardless [fol. 2941] of the provisions of paragraph 1 of Exhibit 5-D and of paragraph 1 of Exhibit 5-G, that the dealer or purchaser of your petroleum products, of gasoline, did in fact, while contracts of that type were in effect between the dealer and Richfield purchase his entire requirements of gasoline from Richfield?

A. It has been our experience that while these contracts have been in effect that the dealer has purchased his entire requirements, though there are numerous instances where he has canceled the agreement or otherwise abrogated it by ceasing the purchase entirely of our products.

Q. My question, of course, related only to the purchases made while the contract was in effect.

A. I believe I answered that, Mr. Dixon.

Q. Very well. Now, I believe you also testified——

The Court: Well, a penalty attaches to that. If he doesn't do that, then he is obligated to pay for the cost of the painting?

The Witness: No, your Honor, that is not correct. In the first place, he has, on the one hand, this sales contract, in which he has agreed to purchase a specified quantity of gasoline.

The Court: That is right.

The Witness: Then in addition, on the other hand, if he has desired to have the station painted, we have painted the [fol. 2942] station and he has signed a paint contract.

The Court: That is right.

The Witness: And as long as he continues to purchase the quantity of gasoline as specified in the sales contract, even though he sold other gasoline, we would have no right to effect collection under the paint contract.

The Court: I see.

The Witness: The only time we have ever effected col-

lection under the paint contract is where he has stopped buying entirely, and we are out of the station.

The Court: I am glad you set me right on that.

By Mr. Dixon:

Q. But while he is buying any gasoline from Richfield, he is buying his entire requirements, is he not, Mr. King, under the forms of sales contracts, Government's 5-D and 5-G.

Mr. Paradise: I object to the form of the question as argumentative, and an interpretation of the contract. I have no objection to a question concerning practices.

The Court: Overruled.

The Witness: As I have testified, Mr. Dixon, it is my knowledge that so long as these contracts are operating with the dealer that he has bought—it has been our experience he buys his entire requirements from us, though we have numerous experiences where he abrogates the contract.

The Court: The sales contract is gauged to the maximum [fol. 2943] that he can use, is it not?

The Witness: No. You see, your Honor, he is only obligated to buy under this contract a quantity not to exceed 75 per cent of his known past sales.

The Court: All right.

By Mr. Dixon:

Q. I believe you testified, Mr. King, that with reference to TBA products, Richfield does sell some such products direct to dealers.

A. Yes. I believe I have testified, Mr. Dixon, in about 25 instances do we make direct sales to dealers.

Q. Are those instances of L-O dealers or operators only?

A. No. I believe that the instances I speak of will include both—may include both L-O operators, 3-C's and 337's.

Q. What is the basis of your determination of making such direct sales to such dealers?

A. I have previously testified that our reason for making a direct sale to the dealer is where we encounter an in-

stance where the dealer is such a large seller of TBA items that competition would extend to him as good a price as would be enjoyed by our own TBA distributors.

I would like to correct my previous testimony, to strike out the L-O operators. Our deals, I am positive, are all confined to 3-C's or 337's.

[fol. 2944] Q. What quantity of purchases does such a dealer have to make before he is entitled to this additional discount, as you would call it, or a discount?

A. Well, as you may know, in the automotive accessories business, including tires and batteries, dealers receive certain discounts for their volume sales and the minimum amount that is delivered. I am not too familiar with that practice, but where a dealer has a known volume of business, competition—I am speaking now of the vendors of automotive accessories, and tires, and batteries—will give that dealer a proposition in keeping with the volume of his sales. Therefore, when we encounter that situation, if we desire to do business with that dealer, why, we would have to be competitive with the general practice in the automotive industry.

Q. I understand that, Mr. King, but I would like to know what tests you apply as a matter of policy, on the part of Richfield, as to when you decide that a dealer is eligible for that discount. Do you understand my question, Mr. King?

A. I think I do. I think that would arise under these circumstances: The account, or the dealer, we would like to have him buy at least a representative line of our TBA products, so that they could be sold to our credit card customers. He might, in turn, notify the TBA distributors in that area that there was no use in his calling on him, because he could secure so-called distributors' prices from any [fol. 2945] one of a half a dozen manufacturers of TBA items. That would make known to us that he has a volume of business that would entitle him to, we will say, the wholesale or distributor's margin. In those instances that would probably decide us whether or not to offer a direct TBA distributorship to that dealer.

Q. Does the particular dealer to whom you make these direct sales have to purchase a stipulated amount of TBA

products from Richfield before he becomes eligible for this discount that is not given to the other dealers?

A. It is the general practice in the tire business, for example, to set up——

Q. I don't mean to interrupt, Mr. King,——

A. Yes.

Q. —but could you answer that particular question "Yes" or "No"?

A. Read the question, please.

(The question was read.)

A. Yes.

Q. What is that amount, Mr. King?

A. Those amounts are established by competition in the tire, tube and battery——

Q. I am talking about the amount so far as Richfield is concerned, that the dealer must buy before he is eligible for this discount.

[fol. 2946] A. I am not familiar with the exact amounts. I can't answer that question.

Q. Did I understand your answer to my previous question to be that there was a stipulated amount that he had to purchase before he became eligible for the privilege of buying direct from Richfield?

A. Yes. The discounts are based upon his annual purchases and the quantities that are delivered at any one time, which is common practice in the automotive accessory business.

Q. I am not asking what the common practice is, Mr. King. I would like to know, if you can answer, what the amount is that Richfield has decided the dealer must buy dollarwise before he becomes eligible for the privilege of purchasing direct from Richfield? In other words, is it $10,000 a year, or $5,000, or what is it?

A. Well, I believe I answered that question before, Mr. Dixon, that there are certain practices in the sale of these automotive accessories, and if the dealer says he qualifies or that he has a certain volume of business which would entitle him to certain discounts which would be extended by any vendor of TBA, why, that would be one of the determining factors in extending the proposition to him, but

he would not earn those discounts unless he actually sold the volume that he claimed that he had heretofore.

Q. Then it isn't a matter of Richfield having a particular [fol. 2947] amount that the dealer must buy from Richfield, or buy, before he gets the discount; is that a fact, Mr. King? Do you understand the question?

A. Well, I will ask the question to be read, please.

(The question was read.)

A. Well, if I understand your question correctly, the discounts that a distributor of automobile accessories enjoys vary with the volume of his purchases.

Q. You are speaking now of the Richfield dealer that you give this discount to, Mr. King? That is all we are interested in. I am trying to get an answer as to the amount dollarwise that a dealer must purchase in tires, batteries and accessories before he becomes eligible to get this additional discount that he gets by direct purchases from Richfield.

A. And I am trying to answer your question, and explain to you, Mr. Dixon, that in conformance with the practice in the trade, his discounts are determined by the volume of his purchases. One discount might apply to $10,000, and another discount to $20,000.

The Court: Then there is no precise amount that determines the discount, or is it variable as to the value? That is what he is trying to find out.

The Witness: Yes, and I am trying to give an intelligent answer, your Honor. I am trying to explain that the deal- [fol. 2948] er's discounts or distributor's discounts on tires, for example, will vary with the amount of his annual purchases.

The Court: All right. When do they start? At what amount of sales do they start?

The Witness: These discounts are not payable until at the end of stipulated periods of time. If he has not sold the merchandise, then he does not earn the discount.

The Court: Then what volume in dollars does he have to buy before he earns it at all?

The Witness: I do not know the discount that applies to the minimum amount, your Honor. I do not recall it.

We will assume for the moment that it might be 5,000, and then he would get one discount for that volume, and he might get another discount for 10,000.

The Court: All right.

By Mr. Dixon:

Q. Then, I take it from your testimony or your answer, Mr. King, that there isn't any particular amount dollarwise of the total purchases of TBA products that a dealer must buy before he is entitled to this discount, which he gets from making direct purchases from Richfield; is that a fact?

A. Read the question, please.

(The question was read.)

A. Well, he is not given—he is not entitled to any discount until he actually produces a certain volume of sales, [fol. 2949] or makes a certain volume of purchases.

Q. What is that volume, Mr. King? That is what I am trying to find out.

A. I have told you, Mr. Dixon, that I am not familiar with the volumes that apply to the sales of TBA. I do not know it. It is a detail I am not familiar with. I have just tried to explain to you generally how it works.

The Court: Then put it the other way: Then, as a matter of fact, he gets a discount on everything, the amount only depending upon quantity, is that correct? Or is that incorrect?

The Witness: That is correct, your Honor.

The Court: That is correct. All right. This is a good stopping point. I got something out of the way.

(A short recess was taken.)

[fol. 2950] By Mr. Dixon:

Q. I believe you testified, Mr. King, that these discounts that you referred to are available only to the 3-C and the 337 dealers?

A. Which discounts, Mr. Dixon?

Q. The dealers who buy direct from Richfield as distinguished from those who buy through the distributor or common distributor the TBA products sponsored by Richfield are 3-C or 337 dealers, are they not?

A. Yes. I believe I testified that there might be some L-O operators included in that.

Q. And those are the ones who get whatever advantages, if any, there may be from this discount by purchasing directly from Richfield. I will direct your attention to Government's Exhibit 8. Did you have any discussion with Mr. Dinkins about any of the matters referred to in Government's Exhibit 8, Mr. King, prior to its being written by Mr. Dinkins?

A. I would like to read the letter, Mr. Dixon. I am not familiar with it.

Q. Certainly. I want you to.

A. Yes. What is your question, Mr. Dixon?

Q. I am sorry.

A. What was your question, sir?

Mr. Dixon: Read the question, Mr. Reporter, please.

(Question read by the reporter.)

A. I don't recall I had any conversation prior to its [fol. 2951] being written, but naturally the subject content was undoubtedly discussed.

Q. It is a fact, is it not, Mr. King, that the TBA program referred to in Mr. Dinkins' memoranda, Government's Exhibit 8, related to the entire TBA program of Richfield, did it not?

A. Yes, it related to our TBA program. The whole letter is—the entire contents of the letter is on that subject.

Q. And that in this memoranda, Government's Exhibit 8, as far as you know, Mr. Dinkins was referring to all of the dealers of Richfield?

A. From reading this letter I would say that he was referring particularly to the lack of interest that our commission agents had displayed in acting as a TBA distributor, and in particular, lack of interest that had been displayed in instructing our L-O operators to handle our approved line of TBA.

Q. Did you have any conversation with Mr. Dinkins about this matter of TBA program as outlined in Government's Exhibit 8 after that memoranda was sent to the persons named therein?

A. I don't recall any specific discussion or any certain

discussion, Mr. Dixon. It is a matter of routine business that we undoubtedly discussed on many occasions.

Q. But, to the best of your recollection, the matters re- [fol. 2952] ferred to in Government's Exhibit 8 related to all of the Richfield dealers, did it not, L-O or 3-C or 337?

A. Well, naturally, this letter, the contents of this letter refer primarily to our commission agents and our L-O operators.

Q. May I interrupt there?

A. And our L-O operators, naturally, we were also interested at that time and are interested today in securing the agreement of our dealers to stock TBA so that they can give the service to our credit card customers that I have previously testified to that we would like to do.

Q. I will ask you to refer to Exhibit 8 and state, if you will, whether there is any specific reference anywhere therein to the L-O operators or dealers as such?

A. Yes.

The Court: Well, go ahead. Go ahead, read it.

A. It says:

> "Our TBA activity in 1946 yielded a profit to Richfield of $471,000, an increase of 43.5% over the profit for 1945. This means that every month that went over our heads each controlling L-O unit produced an average *Per Unit, Per Month,* of better than $35.00 which, reduced to terms of resale gallons, means ⅓ cent per controlled resale gallon added profit to the corporation through our TBA activity."

[fol. 2953] He refers entirely to the sale of TBA through L-O stations there, and then he goes on to refer to the fact that we are embarking upon the construction of new service stations.

The Court: All right.

By Mr. Dixon:

Q. So that, then, this memoranda does not apply to all of the Richfield dealers or all of the purchasers of the TBA products sponsored by Richfield, is that your statement now, Mr. King?

A. Every reference in here is either to L-O stations or to our merchandising organization. All the names of individuals that he mentions in here, Mr. Burgner and others who are the division merchandising managers, have nothing to do with the solicitation of business from the dealer stations. So the whole contents of the entire letter, Mr. Dixon, are devoted to the development of more TBA business on the part of our L-O stations.

Q. I asked you the question: Do you now wish to change your testimony, Mr. King, to the effect that you have just mentioned?

Mr. Paradise: I submit that that is unfair.

The Court: No, no. He has stated generally it referred to TBA generally, but the special emphasis was on what was being done at the L-O stations. Isn't that true?

The Witness: I think you have expressed it very well. It talks about TBA, but the principal and general emphasis [fol. 2954] is certainly upon the sale of TBA through L-O stations.

The Court: Very well, let it stand at that.

Mr. Dixon: I believe the witness cleared it up, your Honor. The Government asks that these be marked as Government's Exhibits next in order.

The Clerk: Government's Exhibit 28 marked for identification.

Mr. Dixon: And 28-A.

The Clerk: Government's Exhibit 28-A marked for identification.

Mr. Dixon: We will ask that this be marked for identification as Government's Exhibit 29.

The Clerk: So marked.

(The documents referred to were marked Plaintiff's Exhibits 28, 28-A and 29 for identification.)

Mr. Dixon: The Government offers into evidence Exhibits 28, 28-A, and 29.

The Court: They may be received.

Mr. Dixon: Your witness.

(The documents referred to were marked Plaintiff's Exhibit 28, 28-A and 29 and received in evidence.)

The Court: Redirect. Let me see the exhibits.

Mr. Paradise: Have you finished, Mr. Dixon?

The Court: Yes, he has finished.

Mr. Paradise: Oh, I am sorry. I did not hear you.

[fol. 2955] The Court: Does the record show—at least I did not hear it—on this debit memorandum which is marked Exhibit 29—it is quite evident that this is a carbon copy—but there is a notation of giving a good mark to the man involved in authorizing the discount. I wonder if you could tell us who wrote that? It reads as though it was written by your local merchandiser or somebody, because of the wording of it.

The Witness: I have not seen it, your Honor.

The Court: You take a look at it and tell me.

The Witness: Thank you.

The Court: I so interpret it. In other words, the local man says: Here is a good guy. Give him a little discount which will help him out. Can you tell?

[fol. 2956] The Witness: Your Honor, this refers to an operator of one of Richfield's leased out stations at Salinas. The conditions and circumstances surrounding this are as follows: Due to the fact that our wholesale TBA distributor in that area was changed, and due to the fact that there was that change three times during the year, that is, the wholesale TBA distributor in that area was changed, it is evident that a dispute arose with this particular dealer, who claimed that he was not in a position then to receive the volume discounts that he was entitled to as a result of his purchases of tires and tubes over the period of a year's time, because of the aforementioned change in the wholesale TBA distributorship, who would normally pass that discount on to him. Therefore, to retain the good will of this L-O operator, who had this volume discount coming to him, our representative recommended that the discount be paid to him by the company, inasmuch as the previous TBA distributors were not available and were not in a position to pay that discount.

The Court: All right. Go ahead.

Redirect examination.

By Mr. Paradise:

Q. Mr. King, just to clarify one matter for the record, you testified, and I think this appears on page 1749 of the record, that the average gallonage of L-O stations at the [fol. 2957] end of the last war was, I believe you said, 6700 to 6800 gallons. Then you also testified what the average gallonage of the L-O stations was at the end of 1950. I don't think you mentioned to what period you were referring.

A. I was referring to a monthly average.

Q. That is per month?

A. Per month.

Q. Now, in answer to Mr. Dixon's question, you stated that in some circumstances Richfield gives a discount to 337 or 3-C dealers, and that that takes the form of a letter or an addition to the printed form which is given to the dealer at the time the contract is signed; is that correct?

A. Yes, sir.

Mr. Paradise: Will you mark these for identification, please?

The Clerk: Defendant's Exhibit R, marked for identification.

(The letters referred to were marked Defendant's Exhibit R, for identification.)

By Mr. Paradise:

Q. Mr. King, I show you two mimeographed forms on the letterhead of Richfield Oil Corporation, which have been marked Defendant's Exhibit R, for identification, and ask you whether those are the letters that you have referred to covering these discounts.

A. Well, there are two forms here. One refers to, or, [fol. 2958] one is a subsidy letter to L-O operators.

Q. No, this is the 3-C (indicating).

A. Oh, one is the discount letter or extra margin letter, as we call it, to 3-C dealers, and the other is the extra margin letter to dealers contracted under Form 337.

Q. The instrument that refers in the first line to your sales contract, Form 783, that refers to the 3-C transactions, does it not?

A. Yes, sir.

Q. Just for identification, that is the form that is used with the 3-C dealers?

A. Yes, sir.

Q. And the other letter which constitutes this exhibit refers to Form 337 dealers, does it not?

A. Yes, sir.

Q. Now, is this letter what you have referred to as the extra margin letter?

A. That is correct.

Q. Under what circumstances are these extra margin letters used with the 337 and the 3-C dealers?

A. In the course of our solicitation of business of independent dealers, where we endeavor to contract for a specified portion of their gasoline under either the 337 contract or the 3-C contract, we frequently encounter the offers made by our competitors, in other words, offers made by other [fol. 2959] supplying oil companies. These offers consist of stipulated discounts from the posted tank-wagon or wholesale prices. If we are to be successful in the solicitation or the acquisition of that dealer's business, then it necessarily follows that we must meet the competitive offers made for that dealer's business by other oil companies. Therefore, concurrently with the execution of either the 337 or the 3-C proposition, we execute one or the other of these margin letters, which agrees or by which we convey to that dealer the extra discount that we were compelled to extend in order to acquire his business.

Q. Now, is that extra margin letter ever given to L-O operators?

A. No, the extra margin letter is never given to L-O operators.

Q. Why not?

A. Well, there is no need to. We are not competing with any other oil company for the business of the L-O operator.

Mr. Dixon: I object to that, your Honor.

The Court: That is all right. Go ahead.

By Mr. Paradise:

Q. You have mentioned that you have given something that you called a subsidy to L-O operators, have you not?

A. Yes, we have a subsidy letter for L-O operators.

[fol. 2960] Mr. Paradise: Just one moment.

The Court: Have these margin letters been introduced?

Mr. Paradise: No. Thank you, your Honor. May I offer in evidence as Defendant's Exhibit R the extra margin letters?

The Court: Yes. All right.

The Clerk: Exhibit R in evidence.

(The letters, heretofore marked Defendant's Exhibit R, for identification, were received in evidence.)

By Mr. Paradise:

Q. Calling your attention to Defendant's Exhibit F, is this what you refer to as the subsidy letter given to L-O operators?

A. Yes, this is the subsidy letter that we use in connection with L-O operators.

Q. Under what circumstances is that letter issued to L-O operators under Richfield's practice?

A. During gasoline price wars our L-O operators are faced with lower prices, as posted or displayed or advertised on gasoline by other service station dealers in their vicinity.

Q. This is the matter you have already testified to, and it relates to gasoline price wars; is that correct?

A. It relates to gasoline price wars.

Q. Thank you. Now, Mr. King, Mr. Dixon asked you concerning the change made in the 3-C sales contract, which is Form 783, comparing Government's Exhibit 4-B and 4-C, insofar as it relates to paragraph 1 concerning the [fol. 2961] quantities. Exhibit 4-C, by way of identification, is the form that was printed in the fall of 1948. Mr. Dixon also asked you whether after the form was changed the dealers continued to purchase all of their requirements of gasoline from Richfield during the time the contracts were in effect. To your knowledge, Mr. King, do the 3-C dealers presently, or at any time since

1948, purchase and handle exclusively Richfield oils or greases?

A. That would be a rare instance. I know of no instance —I have no knowledge of any 3-C dealer or 337 dealer handling all of our products exclusively.

Q. Now, you are talking about lubricating oils and greases?

A. I am talking about lubricating oils and greases.

Q. Now, directing your attention to gasoline, what is your knowledge with respect to the purchasing practices of the 3-C dealer on gasoline, subsequent to 1948, under this form of contract?

A. As testified this morning, it has been our experience that the 3-C dealers and the 337 dealers have purchased all of their requirements of gasoline from us, except in those cases where they have broken their contracts and discontinued all purchases.

Q. Now, what to your knowledge have been the buying [fol. 2962] practices of 3-C dealers with respect to the purchase, handling and stocking of approved TBA? And by "approved TBA," I am referring to TBA approved by Richfield for credit card purposes.

[fol. 2963] A. Well, I would say that the average 3-C dealer, upon inspection or upon investigation, it would be determined that he does not handle even our entire line of approved TBA items, and that he will be handling many items competitive with our approved list.

Q. In what manner do you familiarize yourself with the purchasing habits of the 3-C and 337 dealers?

A. Well, by frequent trips all through our operating territory in company with our marketing personnel. I come in contact with hundreds of dealers throughout the year.

Q. During those trips do you visit the stations not only of the 3-C and 337 dealers but also the L-O operators?

A. I try to visit all of our accounts. I try to visit as many as I can.

Q. And based upon that observation would you state the extent to which you have ascertained whether 3-C dealers display competitive lubricating oil signs?

A. I think that, generally speaking, our 3-C dealers not alone are selling competitive motor oils but also are dis-

playing the advertising signs of the suppliers of those oils.

Q. What about signs pertaining to competitive batteries and TBA?

A. I think that that will be—I think that my same answer will apply to those products.

[fol. 2964] Q. Mr. Dixon also asked you concerning the buying practices of the 337 dealers under the Government's Exhibit 5-D, which is the 337 sales contract. Will you state what your experience and observation has been with respect to the buying habits of those dealers since 1948, or before 1948 if you like.

A. Well, with respect to the 337 dealers I would say that, generally speaking, you will find that they are handling competitive oils, greases and TBA items, and displaying advertising signs advertising that fact.

Q. In your opinion what percentage of them are so doing?

Mr. Dixon: I object to that question, your Honor, what percentages.

Mr. Paradise: It is a matter of his observation, Mr. Dixon.

Mr. Dixon: I know.

The Court: Overruled. Go ahead.

A. It is my opinion that at least the majority of dealers fall into the category that I have told you about. I would say 75 per cent.

By Mr. Paradise:

Q. Does that apply equally to TBA as to lubricating oils and greases?

A. I have so testified.

Q. In response to Mr. Dixon's question as to your instruc-[fol. 2965] tions in 1948 as to the manner of determination of quantities to be used in a 337 sales contract, which is Government's Exhibit 5-D and reprint in August 1948, I believe you stated that the instructions were that the quantity to be inserted was a figure which was 85 per cent of the dealer's past purchases. Did I correctly understand your statement?

A. The percentage figure used was 85 per cent. Our representatives were instructed not to insert a figure there as the minimum quantity that would exceed 85 per cent of the dealer's past known sales.

Q. Well, then, the 85 per cent was not to be used as a fixed amount?

A. As a flat figure, no.

Q. Yes.

A. No, that was a maximum. If the dealer elected or insisted, as many dealers will, on a smaller figure, that was the figure that was entered in the contract.

Q. Mr. Dixon asked you concerning these 26 dealers to whom Richfield has sold TBA products directly. Do you know who sets the quantity figures that determines the particular discounts that these large volume purchasers are able to secure?

A. The quantity discounts are established by the manufacturer of those products. They are included in the manufacturer's posted schedule of discounts as they apply to [fol. 2966] their products, and they are available to any dealer or any customer who can qualify.

Q. Are those quantity discounts that these particular 26 large buyers are able to get—have those been determined by Richfield?

A. Oh, no. That is not determined, they are not determined by Richfield.

Q. Do you know whether or not these particular 26 buyers are able to purchase from Richfield's TBA distributors?

A. Well, I tried to explain that this morning, that since this small group of buyers or dealers—since their sales are of such volume as to entitle them to discounts, the maximum discounts as posted by the manufacturers on those various products, it would be impossible for the TBA distributor to sell them because he would be selling them at his cost.

Q. Do I understand from that that these purchasers are entitled to the same volume discounts as the TBA distributors?

A. That is right. In other words, they are commanding a volume of business that entitles them to discounts as great as enjoyed by the TBA distributor.

Q. And is that Richfield's reason for selling these people directly?

A. That is the only basis on which they could be sold.

[fol. 2967] Q. Mr. King, there was testimony by a Mr. Ogburn earlier in this case that he was operating a service station in Reedville, Oregon, and that Richfield had 3-C con-

tracts with a Mr. Mathis covering the station. This was a 3-C transaction. That the property was owned by Mr. Mathis. I would like to ask you if Richfield had many 3-C transactions with a person operating the station as a different person than the dealer who signed the 3-C papers?

A. No, definitely not, and this instance here is the first exception to our routine that has come to my attention where the operator is a different person than the lessor.

Q. And with whom you have the 3-C contract?

A. With whom we have a lease.

Q. Mr. Ogburn also testified that a Mr. Froman, a Richfield employee, came to this 3-C station and filled out a form 205. You are familiar with the form 205?

A. That is the service——

Q. That is a survey?

A. That is a form used by our merchandising staff in the inspection of our L-O stations, yes.

Q. Do you know what Mr. Froman's employment was during the years 1945 to 1950, at which time he visited Mr. Ogburn's station?

A. Well, he was assigned to our merchandising staff and I believe that he was what we call a special retail repre-
[fol. 2968] sentative.

Q. What are the duties of a special retail representative? I do not believe we have discussed this classification of employee before.

A. The special retail representative, of which we have maybe two or three in each of our divisions, is an individual whose responsibility it is to visit our leased out service stations and to inspect the premises, particularly the restroom facilities and the state of cleanliness and the housekeeping at that station. When he visits a station he makes out a report of the items that he finds that are irregular or that should be improved, following which he has a discussion with our operator, and he tells the operator who he is, what his capacity is. And I would like to point out here that the special retail representative is not the individual who normally transacts business with that operator.

Q. When you speak of an operator, what type of station are you referring to?

A. L-O station. In other words, he goes on to tell the operator where he is deficient in the operation of the station,

principally cleanliness and housekeeping, and tells him he will be back again in a matter of weeks and he will make a further check and he hopes that the conditions will be corrected. And he makes a report to the merchandiser who calls on that station, as well as a report to the division man-
[fol. 2969] ager. This man is accountable only to the division manager. On subsequent trips he comes back there. If the condition that he complains about has not been corrected, then this individual has the authority to cut right across the organization lines and make a recommendation to the division manager that the operator in that station have his lease cancelled because he has failed to comply with our standards of cleanliness and housekeeping and so on.

Q. Do the duties of a special retail representative pertain to any stations other than L-O stations?

A. No. His activities are confined by our instructions to L-O stations.

Q. Do the duties and activities of special retail representatives have anything to do with merchandising, even in the L-O stations where he goes, as to the type of products sold or the manner of display of products?

A. No. I have tried to point out that his responsibility is quite different from that of the merchandiser who is there to teach the operator in service station operation and all the various merchandising procedures that we have, whereas this individual is really—well, you might compare him to a health inspector.

The Court: He goes around policing it?

The Witness: He is policing it from the standpoint of cleanliness particularly, the restrooms and the housekeeping [fol. 2970] of the station and so on.

The Court: He would not report it if he saw an unauthorized sign or unauthorized merchandise display. He would not report that, would he?

The Witness: That would be the merchandiser's responsibility, keeping in mind, your Honor, that the people we talk about call only on our leased out stations.

The Court: Yes, all right.

The Clerk: Defendant's Exhibit S marked for identification.

(The document referred to was marked Defendant's Exhibit S for identification.)

By Mr. Paradise:

Q. Have you issued written instructions covering "work habits" of special retail representatives whom you have described?

A. Yes, instructions have been issued covering the work habits of this individual, like every other position we have in the department.

Q. I will show you Defendant's Exhibit S for identification bearing the title "Work Habits-Special Retail Representative," and ask you if those are the instructions to which you referred?

A. This is entitled "Work Habits-Special Retail Retail Representative." Yes, it is.

Q. And those work habits are issued to these people as their instructions?

[fol. 2971] A. Yes, sir.

Mr. Paradise: Defendant offers Exhibit S into evidence.

The Court: All right.

The Clerk: S in evidence.

(The document referred to was marked Defendant's Exhibit S and received in evidence.)

By Mr. Paradise:

Q. Mr. King, if Mr. Froman, the special retail representative that you have referred to, visited a 3-C station sometime during 1949 to 1950 and made out a form 205, was that within or outside of the instructions that you have issued to that group of employees?

A. Very definitely it would be outside the scope of his responsibility or his authority.

Q. Have you had knowledge that that incident had occurred?

A. No, I have had—I had not.

Q. Other than by my question to you?

A. No, I have no knowledge about it.

The Court: Where would he get the blanks for making such a report?

The Witness: What did you say, sir?

The Court: Where would the man in another line of merchandising get a form on which to make a report?

The Witness: Well, I believe there was introduced in evidence here, your Honor, a form 205, which is the ——

[fol. 2972] The Court: Well, I know that. But where did he get it? You say it was out of his line. Where did he get that?

The Witness: This special retail representative would have it in his inspection of our leased out stations. Now, if he went and called on another type of station, then that would be without his scope to do so and to use that form.

The Court: I see. All right.

By Mr. Paradise:

Q. Calling your attention, Mr. King, to Government's Exhibits 28 and 28-A that were introduced this morning, calling your attention particularly to Government's Exhibit 28 I ask you to read the second paragraph of that letter. By the way, this letter, although it apparently is signed by "W. T. Dinkins" bears the typewritten initials "W. G. K. Jr." Does that refer to you?

A. Yes, sir.

Q. Did you prepare this letter? Did you dictate and prepare this letter?

A. Yes, sir.

Q. The second paragraph of the letter states:

> "Just recently, Mr. McCracken advised our people that he intended to serve us with a notice to relinquish our lease inasmuch as he wished to put in another brand of gasoline and operate the location as a cut-price station."

Preliminarily, this particular station was a 3-C station, [fol. 2973] was it not?

A. Yes, sir.

Q. To which this letter relates?

A. The number there designates it as a 3-C station.

[fol. 2974] Q. Now, the statement that Mr. McCracken wished to put in another brand of gasoline, do you have knowledge of whether Mr. McCracken at that time wanted

to put in another brand of gasoline and continue to handle Richfield gasoline at the same time, or whether he wanted to displace Richfield gasoline completely?

A. Mr. McCracken wanted to displace us completely.

Q. Now, this letter was addressed to Mr. DeMartini. I am referring now to Government's Exhibit 28.

I show you a letter dated August 11, 1949, addressed to you and signed by Mr. DeMartini, and ask if this is the letter you received in reply to your inquiry?

Mr. Paradise: Will you mark this, please?

The Clerk: Defendant's Exhibit T, marked for identification.

(The document referred to was marked Defendant's Exhibit T, for identification.)

Mr. Paradise: Would you now read my question?

(The question was read.)

Mr. Paradise: This latter letter is the one marked Defendant's Exhibit T, for identification.

The Witness: Yes, this is the answer to my letter to Mr. DeMartini of July 22nd.

By Mr. Paradise:

Q. The date is August 11, and then a blank with a "9" [fol. 2975] following. Does that refer to 1949, do you know?

A. Yes, that does relate to 1949.

Mr. Paradise: The defendant offers Exhibit T in evidence.

The Court: It may be received.

The Clerk: Exhibit T in evidence.

(The document, heretofore marked Defendant's Exhibit T, for identification, was received in evidence.)

Mr. Paradise: This is my last question, your Honor.

I would like to offer as Defendant's next in order a letter of Mr. DeMartini, dated August 19, 1949, addressed to Mr. Howard M. Van Denburgh, the attorney for Mr. McCracken, the person to whom these last letters have related.

Mr. Dixon: May the record show that is the original letter.

Mr. Paradise: And to which is attached also the original envelope in which it was sent to Mr. Van Denburgh.

The Court: All right.

The Clerk: Defendant's Exhibit U in evidence.

(The document referred to was marked Defendant's Exhibit U, for identification.)

Mr. Paradise: That is all.

The Court: Have you any further questions?

Mr. Dixon: Yes, your Honor.

The Court: Go ahead. We will finish with him. I forgot [fol. 2976] tomorrow is a holiday, so we will try to cover as much ground as we can today.

Recross-examination.

By Mr. Dixon:

Q. Mr. King, your Exhibits R, as I understand it, are executed by Richfield and made a part of the sales contract at the time it is executed by the 3-C and the 337 dealer, and remains in effect as long as the sales contract to which it is appended is in effect; is that correct?

A. Yes.

Q. When you give what you call a subsidy to your L-O operator, that is done orally, is it?

A. No, that is covered by a subsidy letter, Mr. Dixon.

Mr. Dixon: Do counsel have a copy of the subsidy letter?

Mr. DeMartini: That is in evidence as Defendant's Exhibit F.

By Mr. Dixon:

Q. Now, that subsidy is conditioned, is it not, Mr. King, upon the L-O lessee reducing the price of his gasoline, that is, the gasoline that he is selling at that outlet, a stipulated amount below the posted retail price of Richfield?

A. Yes. Where we find that the L-O operator is confronted with cut-price competition, we give him the privi- [fol. 2977] lege, extend to him the privilege of reducing his price to meet that competitior, in which event the subsidy letter is signed, and he is given the subsidy. However, if he does not elect—which is quite probably the exception rather

than the rule—to reduce his price to meet the competition then, of course he does not receive the subsidy.

Q. So that it is conditioned upon his making a reduction in the retail price of his gasoline?

A. Before we would make the subsidy, yes, sir.

Q. And the reduction in that price must equal, or I mean must be twice the amount of the subsidy per galion, must it not?

A. Oh, no, sir.

Q. Or is it the same?

A. In other words, when we authorize a reduction, we extend to him a subsidy exactly in the same amount as the reduction.

The Court: Are you referring to these so-called marginal letters?

Mr. Dixon: No, I am talking about the subsidies, now, to the L-O operators, Judge,——

The Court: I see.

Mr. Dixon: —which are different.

The Court: All right. In the marginal letter I noticed that, as a result of these adjustments, he retained the four [fol. 2978] per cent margin, or isn't that the purport of those agreements?

The Witness: Well, I think I can explain it to your Honor this way: The normal mark-up, the dealer's mark-up above the wholesale or tank-wagon price on one grade of gasoline is four cents. We will use that as an example. Now, an extra margin letter is used by Richfield when we solicit that dealer's business and we encounter a competitive price by other oil companies in which they agree to sell him at X cents below the tank-wagon price. That gives him then a margin, you see, in excess of four cents.

The Court: All right. But, now, getting back to the subsidy, by the subsidy to him you maintain the same level?

The Witness: That is exactly right. In other words, with the L-O operator, in a normal situation his prices are four cents above the tank-wagon price. Now, if he has to reduce his retail price two cents, we subsidize him two cents, and he retains the four cents.

The Court: I didn't get the distinction between the two procedures, and this makes it clear.

By Mr. Dixon:

Q. Mr. King, it is a fact, is it not, that your salesmen do file reports to their supervisors on unauthorized signs at 3-C and L-O stations? I mean at 3-C and 337 stations?

A. We have, to my knowledge, no form on which we have [fol. 2979] issued instructions or requested our sales personnel to report competitive signs.

Q. What is meant, if you know, by the classification "F"?

A. An "F" account?

Q. Yes.

A. I will have to count on my fingers. I believe "F" refers to the classification of a contracted account under the 337 contract.

Mr. Dixon: We ask that these be marked for identification as one exhibit, your Honor, next in order, the same being Form 205, dated 7-48, entitled, "Survey of Service Station Operations," relating to the dealers named therein, and appear to be signed by R. M. Dart, on behalf of the defendant. It is stipulated, as I understand it, that subject to check and verification these may be used in lieu of the originals.

The Court: All right.

The Clerk: That is Government's Exhibit 30, marked for identification.

(The document referred to was marked Plaintiff's Exhibit 30, for identification.)

Mr. Dixon: That is all, your Honr.

Mr. Paradise: I have just one question pertaining to this last exhibit.

The Court: All right.

[fol. 2980] Redirect examination.

By Mr. Paradise:

Q. Mr. King, this last exhibit of the government, a group of Form 205's, are all apparently signed by Mr. R. M. Dart for Richfield. Do you know who Mr. R. M. Dart is?

A. I don't recall the individual right now. I would have to look at our records.

Q. To shorten this, Mr. King, if we would tell you, and it is subject to verification from Richfield's records, if I should tell you that Mr. Dart is a special retail representative, would your testimony concerning his authority be the same as what you have heretofore testified to regarding Mr. Froman in his visits to the Ogburn station?

A. Yes, sir.

Mr. Paradise: No further questions.

Recross-examination.

By Mr. Dixon:

Q. My attention was directed to the fact that one of these forms relates to service station "8027-E." Do you know what type of station that would be, 8027-E?

A. Yes, that is the symbol we apply to the 3-C account.

Mr. Dixon: Thank you. That is all, Mr. King.

(Witness excused.)

[fol. 2981] The Court: All right, gentlemen, the court will now recess until 2:00 o'clock.

(Whereupon, at 12:35 o'clock p. m. a recess was taken until 2:00 o'clock p. m. of the same day.)

[fol. 2982] Los Angeles, California, Tuesday, May 29, 1951
2:00 P.M.

The Court: All right, gentlemen, call your next witness.

Mr. Dixon: The Government offers into evidence, your Honor, Government's Exhibit 30 for identification.

The Court: I thought it was in.

Mr. Dixon: I thought so, too, but the clerk states not.

The Clerk: It was just marked, your Honor. Is it admitted, then?

The Court: Yes.

The Clerk: 30 in evidence.

(The document referred to was marked Plaintiff's Exhibit 30 and received in evidence.)

GRANT L. DUSTO, called as a witness by the defendant, being first sworn, was examined and testified as follows:

Direct examination.

By Mr. DeMartini:

Q. Will you state your name, please, and spell it for the reporter?

A. Grant L. Dusto, D-u-s-t-o.

Q. What is your home address, Mr. Dusto?

A. 330 Aragon Boulevard, San Mateo.

Q. What is your present occupation with Richfield?

A. Assistant division manager in charge of merchandis-
[fol. 2983] ing for the central division.

Q. How long have you had that position?

A. Since 1940.

Q. Will you give us a brief description of your duties?

A. I am responsible to the division manager for the overall operation of all L-O service stations in the central division, and for the training and direction of all the merchandising representatives.

Q. And who are your subordinates who report to you?

A. Special representatives and territorial merchandisers.

Q. How many men are under your jurisdiction of this classification?

A. Of that classification?

Q. Yes, of those two that you have mentioned.

A. 13.

Q. Is it correct to state that you and they deal only with L-O operations?

A. That is correct.

Q. And you have no dealings with the independent dealers?

A. None at all.

Q. From whom do you receive your instructions?

A. From the division manager.

Q. And do you instruct and advise your subordinates in accordance with the instructions that you receive?

[fol. 2984] A. That is correct.

Q. Can you state whether they carry out your instructions as you give them, that is, your subordinates?

A. I believe they do.

Q. How do you know this?

A. I take very frequent trips into the field and meet those men wherever they happen to be working and call on the L-O operators with them.

Q. Now, do any of these instructions relate or pertain to the sources from which they are to procure prospective L-O operators?

A. They do.

Q. Will you state what the instructions are in that regard?

A. The merchandising representatives are instructed to procure L-O operators from a number of different sources. Quite frequently we use men who are employees of our L-O operators, have two or three years experience, and seem capable of operating their own stations. In some instances we advertise in the local newspapers, and we contact practically all types of businessmen in the community in which we are attempting to find prospective operators.

Q. Do any of your instructions relate to the method and manner of interviewing these prospects that have been secured?

[fol. 2985] A. They do.

Q. What are these instructions, Mr. Dusto?

A. The interviewing of prospective operators is usually conducted in two stages or two separate interviews. The first one is usually for the purpose of determining the applicant's qualifications and eligibility, that is, we inquire into his family background, the number of dependents that he has. We find out something about his previous business experience, if any, as to the various types of work he has done. We determine whether or not he has had any sales experience of any kind, any mechanical experience of any kind, and various other lines of questioning which may adapt him for his type of work.

Q. Are they to consider, for instance, his personal appearance and character references?

A. That is correct.

Q. Why do you instruct them to consider these matters in securing an operator for an L-O station? What is the purpose?

A. Well, we attempt to find the best possible type of

men because we want to do, of course, the best job we can with these L-O stations, and the better type of men who are placed in these stations, usually the better we get along.

Q. Do you prescribe any forms to be used in connection with securing applicants?

[fol. 2986] A. We do use two different forms, especially when we haven't any stations available at the time. They are usually kept on file in the event a station is available.

Q. I will show you some forms that are attached to Defendant's Exhibit A, Mr. Dusto, and ask you to indicate which ones are used by you or your people?

A. We use this one, whatever it is.

Q. "Application for Prospective Sublessees"?

A. That is right. This is another adaptation of the same thing, "Application for Service Station Sublease." This is one I designed myself. That is why it is familiar. That is "Application for Employment"—no, that is not right, either. I take that back. This form here, this mimeographed form, was taken from this company sheet and contains the same information as form 901, I believe it is.

Q. And you use those two forms entitled "Application for Employment"?

A. That is right.

[fol. 2987] Q. Do you issue any instructions to your merchandisers relative to the advice or directions to be given to an L-O operator at or before the time he is installed in the station, that is, after he has been selected as a prospect?

A. We do.

Q. Is the merchandiser given instructions as to discussing with a prospective L-O operator at or before the time he moves into the station the following matters: uniforms?

A. Yes, he is instructed to notify the prospective operator that he and his employees will be required to wear the regulation Richfield uniform.

Q. The number of employees that are to be used to operate that station?

A. If the station has been in operation previously, he is instructed to—of course, having previous experience, he knows how many men it takes to operate it, and he is told to tell the prospective operator about the number, and if the station is a new unit, the merchandiser usually informs him as to the minimum crew that that station will require

in order to provide man-power coverage for the hours that it is open.

Q. Hours of operation of the station—going back in each case to the base question?

A. That is correct. He tells the prospective operator what hours the station is to remain open for business.

Q. As to the matter of the cleanliness of the station and of the rest rooms?

[fol. 2988] A. That is usually brought out at the time the merchandiser goes over his 542 lease with him, and he is informed at the time that he is expected to keep the station in a reasonably clean condition, with particular attention to, of course, the rest rooms.

Q. Is any reference to be made to his personal cleanliness and appearance?

A. That subject is also gone into quite at length.

Q. What do they tell him?

A. Well, we usually find out the type of individual we are talking to determines the stress we have to put on that particular subject. If this prospective operator is the type of man whom normally you would expect to keep himself clean, chances are that is the way his mother brought him up, and you won't have trouble with him, but if you suspect he might have a tendency to be a little careless, then a great deal of emphasis is laid on the fact that he has to come to the station clean-shaven and change his uniform as often as necessary to present a good appearance when he contacts the public.

Q. What do you understand by the term "pump island procedure"?

A. The pump island procedure that we refer to by the name of Richfield Safety Service is a procedure which has been worked out to accomplish two things. First, to enable [fol. 2989] the motorist who comes in for service to be served quickly and efficiently, thus saving time for both himself and the operator, and also to give the operator or his assistants the opportunity to determine anything that that car might need, which might cause inconvenience or possibly an accident if it were not taken care of within a reasonably short length of time.

Q. Does the merchandiser instruct the prospective L-O operator on that subject?

A. You mean before he moves in the station?

Q. Or does he do it at any time?

A. Well, he tells him about it before he checks him in, and then he actually instructs him in the service after he has been installed.

Q. Is the operator advised or instructed as to the manner in which he should procure business for that service station from the surrounding area?

A. In the great majority of cases, the merchandiser representative makes what we call a market survey with the man, in which, through a procedure which has been very carefully worked out, the operator is given a picture of the amount of gasoline volume there is in his immediate marketing area, and from that point on his sole mission in life is to help the operator get that business which is available.

Q. Does the merchandiser, pursuant to your instructions, [fol. 2990] advise the operator of Richfield's advertising and his method in using the same?

A. The operator receives most of his knowledge of the company's advertising from attending a meeting, which are usually held in the spring and the fall, and then after he has received general knowledge of what the advertising consists of, then his merchandiser works with him to enable him to cash in on the benefits of that advertising in his own particular neighborhood.

Q. What are some of the advertising aids and helps that are given to the operator?

A. Well, I may be a little confused. To me "advertising" is one thing, and "dealer helps" is something else, Mr. DeMartini.

Q. Well, there are advertising aids given to him from time to time; is that not true?

A. Those are what we call dealer give-aways, such as our wildflower seeds, and wildflower books, and Christmas carol books, and numerous other things of that nature, road maps, by which the operator can imprint the location of the station, and which are either passed out to the people that come in the station, or which are given out as what we call door openers at the time the merchandiser and the operator make calls in the neighborhood. In other words, the merchandiser goes out and takes the operator with him, and [fol. 2991] shows him how to use these things.

Q. Now, what is the prospective operator told as to the brands of products that he is to handle in the station? Take them in this order, gasoline, oil, and grease, and our approved TBA line, what is the operator told in that respect?

A. So far as petroleum products are concerned, he is told that we will expect him to handle Richfield products exclusively. So far as TBA merchandise is concerned, he is told that we will expect him to handle Richfield approved brands, and to secure them from the local TBA distributor to the extent that the TBA distributor is able to supply him.

Q. Does the merchandiser give him any reasons, pursuant to your instructions, at this or any time as to why he is to handle those products exclusively?

A. Well, in my particular territory, when the question comes up, the merchandiser is instructed to tell the prospective operator that Richfield created this station for the purpose of selling its own petroleum products, and we did not build the station to provide competition a place to do business.

[fol. 2992] Q. Is the operator at or before the time of being installed in the station advised as to how he shall order supplies or how he shall get them?

A. You mean petroleum products?

Q. Yes, petroleum products, TBA, the whole line.

A. Yes. He is told how he shall order his petroleum products and where he shall place his orders, that is, with whom.

Q. With whom are the orders to be placed?

A. If the station is located in what we call a branch, a salary-operated branch, he is usually served gasoline on a basis of so many days a week, that is, he will get deliveries, let us say, Monday, Wednesday and Friday, or maybe he will get them Tuesday and Saturday, depending upon the delivery schedule which we have worked out to effect the greatest possible economies in delivery costs. If it is located in a commission agency operated territory, he may be on a delivery schedule basis of the commission agent's, and if he is receiving his gasoline on a direct from terminal basis, he places his order with the commission agent.

Q. Is the operator advised in any manner as to Richfield's credit card program and the products approved for it?

A. Yes. He is advised in complete detail about our whole

credit card program, not only as to how he may solicit credit card business and get new credit card customers, but the [fol. 2993] types of persons who are most likely to be approved as credit card customers, the manner of filling out the applications. And he also has full and complete instructions as to the method of preparing the credit card invoice and as to the quantities and amounts of petroleum products he may sell to a customer. And he is also instructed as to the various items of TBA merchandize which are authorized for placement on a credit card. And then he is handed a credit card manual or credit card folder which contains all this information for reference purposes.

Q. Is the operator advised as to the kinds and nature of signs that he may display at the station?

A. He is instructed that he may not display any signs which are not in our approved classification.

Q. What signs are in the approved classification?

A. The only signs which are approved at this moment are the familiar diamond-shaped Goodyear signs which are on the electrolier poles. There are several decalcomanias which we put on the windows announcing that credit card applications are received, and another one to the effect that that particular operator is qualified to perform automatic transmission service, and that is about the size of it.

Q. Are there any specific instructions given to him relating to displaying signs of any products that might be competitive with ours, with Richfield?

[fol. 2994] A. Well, I think that comes under the question I have just answered. He is to display no signs except those we authorize him to display.

Q. Is it correct to state, Mr. Dusto, that occasionally Richfield holds meetings for these operators at which they are instructed as to certain policies and practices of the company? Is that correct?

A. That is correct.

Q. What instructions are given to the L-O operator as to attendance at these meetings?

A. Before he takes over a station he is told that we expect him to be present and that he will try to get as many of his assistants to attend these meetings as can be spared from the operation of the station.

Q. What is he told as to Richfield's program of mer-

chandising to a station, if anything? That is, at or before the time he is installed?

A. It is a rather large quantity, Mr. DeMartini.

Q. Well, do the best you can. Let me put it this way, to cut it short: Is he told that merchandisers will call upon him from time to time?

A. Well, I can answer that in a few words, I think. He is told that over the period of years we have devised a comprehensive plan of service station operation which has been revised from time to time to keep it up to date, and that this plan, known as the Richfield plan for profits, is contained [fol. 2995] in a series of booklets, these booklets covering every phase of service station operation, and that the merchandising representative in whose territory the station is located will go over the complete plan with him. And he is told at any time he encounters any difficulties in his operation at all, whether it is a matter of being unable to develop enough patronage for the station or whether it is a credit problem or an accounting problem or bookkeeping problem, that the merchandising representative is the man for him to turn to for counsel and advice.

Q. Now, taking the incident of an operator being installed in a station to replace an operator whose operation of that station is being terminated, what is the new operator told, if anything, as to what he is required to buy, first, in the line of petroleum products?

A. He is told that he will be required to buy all of the Richfield petroleum products which the outgoing operator has on hand.

Q. What about petroleum products that are not Richfield's products?

A. He is not only told that he does not have to buy them, but that he should not buy them.

Q. What is he told about the items falling in the TBA classification?

A. He is told that he will be required to take from the [fol. 2996] outgoing operator all of the salable approved TBA items at the current wholesale value.

Q. What is he told about so-called unapproved items?

A. He is told not to buy them at all.

Q. Is he told anything relative to the purchase of equipment from the outgoing operator?

A. If the outgoing operator has equipment of any kind which we approve of on our approved list, the incoming operator is told that he will be required to purchase that equipment from the outgoing operator at its current depreciated value.

Q. Do I understand by that statement, that Richfield has specific approved equipment which is to be used at the station by the operator?

A. That is correct.

Q. And what is the nature of this equipment?

A. It consists of lubrication equipment and lubrication tools, battery service equipment, chargers, volt meters, and tools, tire equipment, a certain amount of car-washing and polishing equipment which is normally necessary for the operation of any service station.

Q. And does Richfield designate the brand and type of equipment which is on its so-called approved list?

A. That is correct. There are presently three brands of lubrication equipment, for example.

[fol. 2997] Q. At this time is anything told to the incoming operator as to any obligation that Richfield will assume at the time he terminates his operation of the station as to whether Richfield will assist him in disposing of any of the items that he has purchased?

A. Yes. He is told that, should he check out of the station, his successor will be required to purchase his merchandise and equipment on the same basis.

Q. By "the same basis" you mean that he will be required to purchase the approved items, but that he not only would not be required to, but not allowed the unapproved items, is that correct?

A. That is correct.

Q. Is anything told to a new operator as to the amount of stock he should have on hand for the operation of the station?

A. Yes. The new operator and the merchandiser usually get together and develop what we call a working inventory. As far as petroleum products are concerned it is based on the size and frequency of deliveries, largely, and the monthly gasoline volume of the service station. So far as the TBA is concerned it is also based on the over-all gasoline volume on a monthly basis, plus adjustments for the

requirements of that particular neighborhood so far as types and sizes of various items of merchandise are concerned.

[fol. 2998] Q. Do you know what the term "direct delivery" means as used in your operations?

A. I am quite familiar with the subject.

Q. Will you describe what it is, Mr. Dusto?

A. A direct delivery is the instance when gasoline is delivered direct by highway transport from a terminal into the storage tanks at a service station, by-passing the local bulk plant entirely.

Q. What is the purpose for direct deliveries?

A. The purpose of direct deliveries is to enable the company to effect economies in transportation and delivery costs by delivering less frequently and more at one time.

Q. Now, do I understand that in order to accomplish direct deliveries a certain amount of storage is required?

A. That is correct.

Q. And does this ever entail the enlargement of storage in existing stations?

A. If the existing station is an older unit that has small tanks in it, it quite frequently does.

Q. What do you do under the circumstances of installing storage for direct deliveries insofar as the operator is concerned?

A. You mean in——

Q. Do you discuss the matter with them at all?

[fol. 2999] A. Yes. He is told in advance that the station is going to be placed on a direct shipment basis, and that the installation of these tanks—and I am talking about an older station now—will take place on or about a certain date, and that he shall prepare himself for it in a financial way. He is asked pointedly whether or not he has enough money to purchase gasoline in the quantities in which we will expect him to receive it. And, of course, the answer to that is either yes or no. And in the event it is "no" and he does not have enough money to buy in larger quantities, then we usually work out what we call a direct shipment loan with the operator.

[fol. 3000] Q. That loan is for the purpose of enabling him to establish the necessary credit or money with which to buy larger quantities of gasoline; is that correct?

A. That is right. And in every sense it is a deferred payment plan for buying a large amount of gasoline. When his loan is paid off, he has built up his inventory by just that much, which he owns.

Q. Is there some interference with the operations of the station during the time the tanks are installed?

A. Yes, in some cases there is quite a bit.

Q. Do you do anything for the operator in those instances?

A. Well, we have made adjustments in a number of cases. We put some big tanks in last winter, when the operator, through no fault of his own, was tied up for as much as 10 days, because the installation of these things could not proceed because it was raining. In those cases we have made some sort of an adjustment, usually by a temporary abatement in his rental, or something of that nature, to compensate him for the business that he lost.

Q. What do you understand by the term "blue sky"?

The Court: Just a moment. You used the word "compensate." Do you mean you are aiding him in any way except just by the rent? You do not mean you give him something in addition to forgiving the rent, do you?

[fol. 3001] The Witness: No.

By Mr. DeMartini:

Q. What do you understand the term "blue sky" means?

A. Well, I understand it as funds or payment which, shall we say, the new operator might pay to the outgoing operator for his good will, or something of that nature.

Q. Do you give any instructions to your merchandiser as to advising the operators, prospective operators, as to the payment of "blue sky"?

A. Yes. The merchandiser is instructed to see to it that no money changes hands other than the exact value of the merchandise and the equipment; no blue sky.

Q. Why do you give those instructions as to blue sky? Why do you allow no payment of blue sky?

A. Well, because the outgoing operator has nothing to sell other than his merchandise and his equipment.

Q. In other words, he has no good will which he is to dispose of?

A. That is correct.

Q. Is the merchandiser given instructions relative to discussing with a prospective operator as to the terms of the lease, referred to as the 542 or L-O lease?

A. Yes, the merchandiser is instructed to go over the 542 lease with him in detail, paragraph by paragraph.

Q. What is he told, in particular, to advise the operator [fol. 3002] as to the 24-hour termination privilege in that lease?

A. He is told that the 24-hour cancellation privilege, of course, is a mutual one, and we insist upon it being there. It is a question that is always brought up, by the way. We insist on its being there for our own protection, and for the protection of our other L-O dealers, so that we can recover possession if the operation becomes substandard, or any thing of that nature.

Q. What is he told, if anything, with respect to the rental provisions and the fixing of rents under the lease?

A. He is told that the basic rental policy for all stations is one cent a gallon on all the gasoline delivered to the station during the month, with a certain stipulated minimum. And then it is explained to him what the rental in that particular station has established there.

Q. How is this minimum fixed or established?

A. In our territory the minimum is usually established on the basis of approximately 75 to 80 per cent of the previous year's average monthly gallonage. For instance, if the average for the prevous year was, shall we say, 10,000 gallons, then the rental would be established at one cent a gallon, with an $80 per month minimum.

Q. Is it correct to say that your aim is to arrive at a gallonage figure of a rental of approximately one cent a [fol. 3003] gallon? Is that it?

A. That is correct.

Q. What do you understand by the term "flat rental program" or "policy," if there is one?

A. The flat rental policy was established several years ago to provide an incentive for some of the older operators to effect further increases in gallonage, in which, providing the gallonage for the previous year had not been subnormal, the operator was given the option of paying a flat rental,

based on the previous year's average monthly gallonage.

Q. By "flat rental," you mean a rental of so many dollars per month without any gallonage rental; is that correct?

A. I mean so much and no more.

Q. In accordance with your instructions and practice, when is the merchandiser told to procure the signature of the prospective L-O operator to the lease, the Form 542 lease, that is, in point of time of installation?

A. The merchandiser is instructed that when he is making a change of operators, the first thing he is to do after he arrives at the station in the morning,—let's say the check-out is set at 7:00 o'clock, the first thing to do is to get the outgoing operator to sign his termination papers and the incoming operator to sign his 542 papers. That is the first thing he does before he does anything else.

[fol. 3004] Q. Then what is done with that lease that he signs?

A. Those documents are then mailed to the division office for execution.

Q. And after the execution, is a copy returned to the operator, a signed copy?

A. Yes, it is mailed to him.

Q. Is the merchandiser instructed to advise an operator or prospective operator in any manner as to the possibilities of procuring another station, or better station, under any circumstances?

A. So far as the possibility of securing another station in the central divis-on territory, we do not permit him to have another one, that is, a second one.

Q. No; I meant a successive one, not two together.

A. We usually don't mention that unless the prospective operator himself brings it up. It does come up from time to time, and especially where you might have an extremely high type chap, but the only station that is available in the area might be something that is not quite new and modern. In that event, if he brings the question up, he is then told if he does a good job with the station that we are talking about in particular, that he will be considered for a better unit when one is available.

Q. Do you know of any instances where an operator has been promoted to a better station?

[fol. 3005] A. Yes, I do; quite a few.

Q. Can you name any of them, within your own knowledge?

A. About a year ago we checked a man by the name of Rene Pons out of 17th and El Camino in San Mateo, which was an old ramshackle unit, and put him in a new station at 23rd and El Camino in San Mateo.

Then we had a young man by the name of Crawford in Eureka, who was at Wabash and Eel, a small neighborhood station, and we built a new station on the highway just south of town, on Broadway I think it was, and he asked for the unit, and I authorized him to have it, on the recommendation of the branch manager.

Q. Without naming any more, there are other instances that you know of, Mr. Dusto?

A. Yes, there are quite a few.

Q. Now, let us pass to the station where the operator is installed and is commencing to do business. Does the merchandiser continue to have any relation or association with that operator, and, if so, what is it?

A. At the outset he is instructed to spend, if the circumstances permit, a minimum of five days with that new operator during which he covers in a general way all of the general practices and policies which we expect to be maintained at our L-O units.

It may be that he can't spend five consecutive days there, [fol. 3006] but he is instructed to cover this same material with the man over as limited a period as he can commensurate with the demands of the other things that he must do at other stations.

Q. Does the merchandiser instruct the help of the operator, or give the operator instructions as to instructing his own help at this time?

A. The merchandiser usually takes the attitude that he expects the operator to train his own help, but quite frequently the merchandiser must demonstrate to the operator how this training should be done, because in most instances the operator himself is not trained in training, if I may put it that way.

Q. Thereafter, how often does the merchandiser call on this station, pursuant to your instructions?

A. It is difficult to answer that question, because the merchandiser is instructed to spend 75 per cent of his time with the weaker 50 per cent of his operators, so that if he was a capable individual and capable of operating without a great deal of assistance or supervision, he might call on him as little as once a month, and if he was at the other end of the line he might spend—he might be there every week. In fact, he might be there for as much as two days every week. It all depends on the need.

Q. Are you familiar with the form entitled "Survey of [fol. 3007] Service Station Operations," bearing form number 205. Incidentally, it is in this case as Defendant's Exhibit C. You are familiar with that, are you?

A. Yes, I am.

Q. Is the merchandiser instructed to use that form in connection with his contact with the L-O operators?

A. He is instructed to prepare that form at least every sixty days.

Q. How is that form used? Can you describe the manner of its use?

A. The merchandiser prepares that in conjunction with the operator. In other words, the two of them get together, and the merchandiser endeavors to get the operator to see the station as it actually is, which isn't always easy, but to get an agreement that certain things must be done, and then to get any operator, of course, to attempt to correct these situations, whatever they may be. It may also develop in the course of making this survey, that there are some things to be done at the station which are Richfield's responsibility, like repairs of one sort of another, or replacement of worn-out equipment possibly.

Then at a later date, of course, when another one of these surveys is prepared, then the operator and the merchandiser get together and see whether they are making any progress. That is the whole point of the form.

[fol. 3008] Mr. DeMartini: Will you mark this, please?

The Clerk: Defendant's Exhibit V, marked for identification.

(The document referred to was marked Defendant's Exhibit V, for identification.)

By Mr. DeMartini:

Q. I will show you a sheaf of printed pages, Mr. Dusto, which bear the form number 1071, the different pages of which appear to have different titles and which is marked Defendant's Exhibit V, for identification. I ask you if you know what that form is, and describe the manner of its use, if you please.

A. Yes, I am very familiar with this form. This is a training guide. In it, broken down by the various phases of service station operation, are practically all of the service and sales procedures which the operator would need to know about, and the merchandiser uses this as a record and guide of his activities in connection with the training of this particular operator.

Q. It carries through the various phases of training; is that correct?

A. That's correct.

Q. What is done with it after it is filled out, or is it filled out, or is it just used as a guide?

A. Well, it is used as a guide. It is one of those things that is never complete. It has some check marks on it, [fol. 3009] which have certain symbols which mean that the merchandiser has discussed this or that with the operator, and then when he has handled it,—I mean, when the operator, let us say, is proficient in, let's say, servicing automatic transmissions, he puts another symbol on, and that means that the operator is now proficient in that service. Of course, he finds out, as time goes on, that the man may be proficient now, and three months later has forgotten, or has slipped a little bit, and then he goes back and starts the same thing all over.

So it provides at the top, where he inserts the numbers of the various stations under his supervision, so that he has a space here for as many *of* 25 stations, if he has that many in his territory.

Q. And those are used by all of your merchandisers?

A. Those are used by all the merchandising people.

Mr. DeMartini: I will offer this in evidence.

The Court: It may be received.

The Clerk: Exhibit V in evidence.

(The document, heretofore marked Defendant's Exhibit V, for identification, was received in evidence.)

[fol. 3010] By Mr. DeMartini:

Q. The instrument that I showed you has a print date 1950. There were previous forms of like nature that were in use, is that correct?

A. That is correct.

Q. How long has it been in use?

A. You refer to that printed form?

Q. Well, the one that I have here is print date 1947, so it has been used since that time, I assume?

A. It has been a mimeographed form even prior to that.

Q. What instructions are given to your merchandisers as to what action is to be taken with respect to an operator who fails to comply with the various instructions which we have just reviewed?

A. The merchandiser is instructed to exercise a great deal of patience with the operators under his supervision in respect to their conformity with all of these standard practices and policies, to make quite certain that the deviation is not due to the fact that he has failed to get his training over or has failed to make it clear and certain that this condition, whatever exists which is in disfavor or is disapproved of, to give the operator every opportunity to correct whatever deficiencies exist, and then as a last resort, and only as a last resort, to tell the man he will just simply have to terminate his lease.

Q. Is he told why, and that is to say, the reasons pursuant [fol. 3011] to which he should recommend that an L-O operator be displaced? That is, what are some of the circumstances of justifications in accordance with your instructions that would impel a merchandiser to recommend the displacement of an L-O operator?

A. The merchandiser is instructed that examples of action or negligence on the part of the operator which would warrant a termination of his lease would be such things as operating with very limited operating hours, the failure to have a sufficient crew on the station to enable him to further increase the volume, to the absence of his ability to maintain a proper inventory of merchandise, the keep-

ing a filthy and disorganized station, negligence on his part which might result in damage to the property, the attempt on the part of the operator to engage in what we might call absentee operation, in other words, to try and keep the station in name and go out and, let us say, take another competitive station or take employment somewhere else. Those are a number of instances.

Q. Taking the case of a station which we are losing, for instance, by reason of the termination of the lease or a street change or something of that nature, what is Richfield's policy and practice as outlined by your instructions relative to the petroleum products and approved merchandise and equipment of the operator of that station?

[fol. 3012] A. In the event we lost the station for one reason or another, the merchandising representative is instructed to first permit—to instruct that operator to permit the inventory to run down. Any remaining petroleum products on hand as of the final closing date are returned to stock and the operator issued credit for it. The TBA merchandise which is on hand is either—the first step is to dispose of it to other operators or to any other dealers, our own or anyone's else who might care to buy it, especially broken packages. What is still left there then, quite frequently the TBA distributor will take it back, that is, providing it is approved merchandise. And so far as the equipment is concerned, in most cases we will either help him dispose of it at a fair price or, if we are unable to do that, we will buy it ourselves. In other words, we do not close the station and leave the operator high and dry, providing he has conformed to policy. If he has taken a lot of unauthorized merchandise or super de luxe equipment which we did not advise him to buy in the first place, why, that is his tough luck and not ours. But if he has conformed to our instructions and policy, he is able to close out the business and cash in completely.

Q. In an effort to cut this short, Mr. Dusto, and obviate the necessity of repeating your testimony I am going to ask you a few leading questions, if court and counsel will permit me to. Richfield is divided into three operating di-

[fol. 3013] visions, is that correct?

A. That is correct.

Q. And you have an official counterpart in each division, is that correct?

A. That is correct.

Q. And who is that in the other divisions?

A. That is Mr. C. S. Burgner in the southern division and Mr. J. T. Chapman in the northern division.

Q. Is it true that you meet with these men occasionally and with your superiors at which you discuss the policies and practices of your operations?

A. That is correct.

Q. How often do you meet?

A. Twice a year or more.

Q. On the basis of those meetings, you are familiar with the operations generally and can state that the same practices and the policies are prescribed for the operation of the entire company, is that correct?

A. So far as I know, all three divisions operate under the same policy and practice.

Q. So can you state of your own knowledge, as acquired from these meetings, whether Mr. Dusto and Mr. Chapman are told to follow the same general practices and policies and, to the best of your knowledge, they do follow them, is that correct?

[fol. 3014] A. Mr. Burgner and Mr. Chapman. Yes, I think they do.

The Court: All right. Do you want to take a short recess or is your examination going to be brief?

Mr. Dixon: It is going to be rather brief, Judge, I think.

The Court: All right, let us go on. Have you finished?

Mr. DeMartini: Yes, sir.

Cross-examination.

By Mr. Somerville:

Q. Mr. Dusto, you testified concerning the manner that these prospective lessees of leased out stations were obtained. It is a fact, is it not, that some of your leased out operators have formerly operated service stations handling the brand gasoline of some other oil company other than Richfield?

A. That is correct.

Q. And in some instances you select operators who have operated a service station in the general vicinity of the leased out stations which they are to enter, is that correct?

A. That might be possible.

Q. Do you on any occasion receive applicants who are seeking for a 542 lease and come to you concerning the lease?

A. I did not get the first part of that question.

Q. As I understand from your testimony, you described certain means by which you attempted to acquire operators for these stations, such as advertising and having your [fol. 3015] merchandisers make certain contacts. Isn't it true that that works in reverse, that sometimes applicants come to you seeking a station?

A. That is correct.

Q. With regard to the instructions that are given to an incoming operator, you testified that the new operator is instructed to wear uniforms. Who pays for those uniforms?

A. The operator.

Q. Who selects the help at that station in those cases where the lessee is unable to handle all of the business himself?

A. Either the operator will do it himself or he will ask for the assistance of the merchandiser to help him interview some prospective help.

Q. Do you reserve the right to veto any particular employee of his?

A. No, we don't.

The Court: But you reserve the right to tell him if he is to ask for help?

The Witness: That is correct.

By Mr. Somerville:

Q. You supply no financial assistance with respect to paying his help, do you?

A. No, we don't.

Q. With respect to advertising helps, you described some items such as the flower seeds and road maps and these [fol. 3016] other items that are given away to service stations. Do you know, Mr. Dusto, whether those items are

also supplied to the other type of stations, the dealer type of stations?

A. They are supplied to all types of Richfield resale outlets regardless of classification.

Q. Does the leased out operator pay for those items?

A. Not those particular items that I named, no.

Q. Does the dealer type of operator pay for those items?

A. No, he does not pay for them, either.

Q. In other words, they are given on the same basis for all service station operators or dealers?

A. That is correct.

Q. Who pays for the lube charts and the door stickers indicating when a lube job has been performed and when the next performance is due?

A. The lubrication charts are purchased by Richfield and loaned to the L-O operator.

The Court: He does not mean those. He means the stickers that they put on the ledge of the door. Isn't that what you mean?

Mr. Somerville: Yes. I believe I did compound that question, sir, but let us confine it to the little stickers.

The Court: To let you know when the job was done and when the next one is due.

The Witness: Well, the question was compound. The [fol. 3017] chart is one thing and stickers something else.

By Mr. Somerville:

Q. Let us confine it to the stickers. I realize I did it.

A. The operator pays for the stickers.

Q. The dealer pays for it, the operator?

A. The operator, yes, sir.

The Court: Well, the chart, you have got a book.

The Witness: That is right.

The Court: It is a very big book.

The Witness: That is correct.

The Court: And it may have all the standard automobiles.

A. We call it a lubrication guide.

The Court: And then the man is supposed to memorize that thing.

The Witness: He is supposed to refer to it.

The Court: Whenever he is stuck, that is what he studies, isn't it?

The Witness: He is supposed to refer to it.

The Court: To refer to it, that is right.

By Mr. Somerville:

Q. You give the customer a chart that describes the services performed, that is, the operator does?

A. He gives him what we call a job ticket.

Q. And who pays for that?

A. The operator.

[fol. 3018] Q. Do you personally supervise the checking in of new lessees, Mr. Dusto?

A. I haven't done so for quite a while.

Q. You testified that the operator is told generally how much TBA merchandise he is to stock and how much petroleum products he should have on hand. Normally it is a fact, is it not, that the operator pays cash for that merchandise?

A. Normally he would pay cash, yes.

Q. In some instances there have been operators who have started out in entirely new stations during your experience, have they not?

A. That is correct.

Q. In those situations the operator would have to invest a considerable amount of money for an opening stock, would he not?

A. That is correct.

Q. You testified that in some cases these direct shipment loans were given. Do I understand that those were given only for payment of quantity of direct shipments of gasoline, or does that apply also to TBA products?

A. Well, a direct shipment loan, as we term it, is for that exclusive purpose and nothing else.

Q. Does that happen very frequently?

A. Quite frequently.

Q. During the installation of these tanks where the serv-[fol. 3019] ice may be interrupted, in the event the operator has help do you give him any assistance with respect to paying their salaries, other than the possible rental reduction?

A. No, we do not. I might mention—in fact I would like to mention—that these installations are normally made in such a way that they have very little effect on the normal progress of business. We would not deliberately start an installation, for instance, on a Friday and tie the operator up over the week-end. If we had to tear out the old tanks, which we do in most cases, we would not uncouple his old tanks until at least one of the new tanks was in and hooked up. Every precaution is taken to keep the station as nearly as possible on a normal operating level.

Q. On these direct shipments on a full load, at the present time how much would a full load cost to the operator?

A. We have a very few operators that take a full load. By the way, that is truck and trailer. That would be about 7,500 gallons. That would run somewhere between $1,350 and $1,600, depending on the price of the gasoline in that particular area.

Q. In some instances have you instructed leased out operators to take a full load, shipments of full loads?

A. We have about 10 or 12 operators taking full loads at their own preference. The normal requirement is half a load, which is either the truck load or the trailer load, [fol. 3020] which runs about 3,750 gallons. Some of them do considerable volume of business and, naturally, it would have to be to take that much gasoline, take the full loads because of the temperature and correction adjustment that they get on the gasoline.

Q. I understand from your testimony that you direct operators, or, rather, suggest the amount of TBA stock that he should have on hand. Normally what investment is required for the operator to have a complete stock of the items as directed by you?

A. That would vary with the size of the station from a gasoline volume standpoint. On the average, I would say that their entire battery and accessory inventory would possibly run from $1,200 to $1,500.

Q. You testified that the lessee-operator is given some training. Would you tell the court whether that training occurs after he enters the occupancy of the station or before?

A. It could occur either before or after or both. Quite frequently, when the prospective operator has never been in the service station business, has been in some other type

of business, he will be placed with one of our better operators and might work for him a week or 10 days or two weeks to learn to get the feel of things. He would work there under the direction of our merchandising representative who would use this other operator's station as a place [fol. 3021] for doing the training and where the man could see in action some of the practices and procedures that we had previously talked to him about.

Q. Is the man paid a salary by you during that training period?

A. No, he is not.

Q. With respect to Defendant's Exhibit V, which is the dealer training guide and the dealer's TBA manual, when did you say that particular guide and manual went into effect?

A. It went into general effect in 1946 or '47 as a printed form, I believe, and prior to that it was in its more or less—we were just in the process of putting it together.

Q. With respect to the termination of any particular lessee-operator under the 24-hour clause do you have the final decision as to whether that operator shall be replaced?

A. So far as the division is concerned, I do not.

Q. Who would have that authority?

A. The division manager.

Mr. Somerville: That will be all, Mr. Dusto.

Mr. DeMartini: That is all.

The Court: One question, Mr. Dusto. In giving the list of faults or sins, shall we call them, for which termination might be made, I notice you did not refer to the failure to observe the rule in regard to carrying non-approved items [fol. 3022] of TBA.

The Witness: I just happened to overlook that, your Honor.

The Court: What?

The Witness: I just overlooked that.

The Court: That is the top of the list of sins, isn't it?

The Witness: And I do not believe I mentioned petroleum products, either.

The Court: I see. All right. Well, I just wanted to know and be sure if that is in the proper perspective, you know, because that seems to have been stressed by every other wit-

ness and I have noticed in giving the list you omitted that. All right. Anything further from this witness?

Mr. Somerville: No, your Honor.

The Court: All right, step down. Take a short recess, gentlemen.

(Short recess.)

[fol. 3023] Mr. Paradise: Mr. Knudson, please.

JOHN E. KNUDSON, called as a witness by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

Direct examination.

The Court: State your name, please.

The Witness: John E. Knudson, K-n-u-d-s-o-n.

By Mr. Paradise:

Q. What is your occupation, Mr. Knudson?

A. Present occupation is personnel supervisor for Richfield's Northern Division.

Q. Prior to your present occupation as personnel supervisor in the Northern Division, were you a merchandiser for Richfield?

A. Yes, sir, I was, for approximately five years.

Q. During what period?

A. For approximately five years.

Q. Were you a merchandiser during the period from 1946 to 1947?

A. Yes, sir, I was.

Q. Are you acquainted with a Mr. Robert DeLonge?

A. I am.

Q. Were you acquainted with Mr. DeLonge at the time he [fol. 3024] occupied a Richfield L-O station, during the period, I believe he testified, from October 29, 1946 to September 29, 1947?

A. From the time approximately a month after he went into the station to the time when he left the station, yes.

Q. How often did you see or talk to Mr. DeLonge during the period that he was in the station?

A. At least once a month.

Q. That is, I think you testified, commencing about a month after he moved in?

A. That's right.

Q. Was Mr. DeLonge's operation of the station satisfactory?

A. Mr. DeLonge, in my opinion, was a very good service station operator.

Q. Did he conduct any other business in connection with the operation of his service station?

A. Yes, he did, in the back part of the particular service station that he occupied, he conducted a garage repair or replacement parts service.

Mr. Hall: I can't hear you very well, Mr. Knudson.

The Witness: He conducted a garage repair business.

By Mr. Paradise:

Q. Did you ever complain about his conduct of that subordinate business, or of that additional business?

A. No, I didn't, because Mr. DeLonge worked himself [fol. 3025] primarily in the service station end of the business, and had his mechanics doing the work in the back.

Q. Mr. DeLonge has testified in this case and stated that he left the station on or about September 29, 1947. Did you have any discussions with Mr. DeLonge prior to that date, concerning Mr. DeLonge's desire to leave the station?

A. Yes, I did. Sometime in August, I believe, Mr. DeLonge told me that he thought he would like to leave the station, and I attempted to explain to Mr. DeLonge that we would appreciate his staying, if he could see fit to do so.

Q. Was there any discussion at that time concerning the finding of a new operator for the station, by either you or Mr. DeLonge?

A. Well, during that discussion it was understood by me that he and I——

Q. I am calling for conversations, Mr. Knudson.

A. I understand. Well, I advised Mr. DeLonge, when he expressed the desire and made it definite that he wanted to get out, that I would attempt to find another successor operator to Mr. DeLonge as soon as possible.

Q. Did Mr. DeLonge also mention that he was going to look for a successor?

A. He also mentioned he would keep on the lookout for someone. However, he never did run across anybody.

Q. At that time was there any discussion as to what the [fol. 3026] successor operator would purchase by way of petroleum products or other merchandise?

A. I explained to Mr. DeLonge that we would assure him that the approved Richfield TBA products and approved Richfield equipment, service station equipment, and petroleum products would be sold to the successor at the depreciated value and the correct wholesale value at that time, whenever it was to be, and that as far as the garage repair equipment and merchandise along that line, that we could not guarantee any sale, that it would depend on the individual.

Q. Have you ever met a man named DeHoag?

A. Yes, I have.

Q. Will you state under what circumstances you met him, and where?

A. A commission agent at Olympia, Mr. Kisor, at that time made an appointment for me to interview Mr. DeHoag with a view of his leasing the service station.

Q. When did that occur in relation to the time when Mr. DeLonge moved out of that station?

A. That would be approximately a week before that date.

Q. What discussions did you have with Mr. DeHoag on that occasion?

Mr. Hall: Just a minute. Your Honor, I object to any discussion between this man and Mr. DeHoag, who is not a party to this suit, and that is not binding.

[fol. 3027] The Court: But there is testimony regarding him and the difficulties in the record.

Mr. Hall: In the presence, I believe, of Richfield.

The Court: Overruled.

By Mr. Paradise:

Q. What conversation did you have with Mr. DeHoag on this occasion, one week before Mr. DeLonge moved out?

A. In talking with Mr. DeHoag, I asked the background

of the sort of business he was doing, and his business experience.

Q. I can't hear you, Mr. Knudson.

A. I asked his past business experience, and he advised me that he at that time was in the process or had sold out or was selling out a radiator repair shop in Portland, Oregon, and that he felt Olympia was in need of a radiator repair shop, and that it would be a good business for him to go into, and his idea would be to set up his radiator repair shop in our service station, in the back end.

Q. Following that conversation did you have any discussion with Mr. DeLonge concerning Mr. DeHoag?

A. One or two days before the actual——

Q. Just answer my question, Mr. Knudson.

A. Yes, I did.

Q. When did that conversation occur?

A. About one or two days before the actual check-out.

[fol. 3028] Q. When you speak about the check-out, are you speaking of the day Mr. DeLonge left?

A. The day Mr. DeLonge left, that's right.

Q. What conversation occurred?

A. I advised Mr. DeLonge that Mr. Kisor and myself had decided not to lease the service station to DeHoag, and that we had picked a Mr. Winters to be the successor to the lease.

Q. Was there any discussion as to Richfield's reasons for its decision in not leasing this station to Mr. DeHoag?

A. Yes. I explained to Mr. DeLonge that Mr. DeHoag had planned, and his primary purpose in getting the service station, in our opinion, was to operate this radiator repair shop, which it seemed to us would be detrimental to the operation of the service station, and that the service station would, in his operation, be a sideline rather than the main business, and we felt that our business would suffer because of it, whereas the other man that we picked, Mr. Stanley Winters, had been a service station operator and wanted to operate only the service station end of the business.

Q. Did Mr. DeLonge make any complaint about that at that time?

A. He objected to the point that Mr. DeHoag, of course, would have purchased all of his garage equipment, whereas [fol. 3029] Mr. Winters was not going to purchase it. But

he said, "If that's the way you want it, that's the way it will be."

Q. Now, calling your attention to the date on which Mr. DeLonge left the station, who all were present on that day, and will you state, in brief summary, what occurred.

A. The first thing in the morning, upon our arriving there, I think it was about 9:00 o'clock in the morning,——

Mr. Hall: What was that?

Mr. Paradise: The date on which Mr. DeLonge left the station. Would you start over again, Mr. Knudson?

The Witness: Yes. Upon arriving there, at approximately 9:00 o'clock in the morning, Mr. Dinsmore, another Richfield representative, was with me, Mr. Winters was there, the prospective purchaser we had chosen to lease the station, Mr. DeHoag, and a Mr. Baker were there, and Mr. DeLonge, and Mr. DeLonge's employees.

By Mr. Paradise:

Q. And what occurred?

A. Well, shortly afterward, Mr. DeHoag came to me and stated again, after I had previously told him that we would not lease the station to him, if we would reconsider and lease it to him. And I told him, no, that we were leasing it to Mr. Winters.

Then shortly after, I presented the 306 termination to Mr. DeLonge for terminating his lease, and he glanced over it rapidly and said that he would like to show it to his attorney [fol. 3030] before he signed it.

I said, "Well, in that case, we can go ahead with the inventory," which he agreed to and Mr. Winters agreed to. Mr. Dinsmore left at that time and did not come back until late that night. Then we began the process of taking the inventory.

Q. When you are talking about the inventory—inventory of what?

A. Of the merchandise, TBA products, pertaining to the service station, and only the Richfield approved products were listed on the actual inventory, and then, of course, they were later priced as to the correct wholesale price at that time. Then also the equipment inventory of the normal

service station equipment, and the depreciated value was set.

Q. Did Mr. Winters buy all of the Richfield petroleum products at the station?

A. Yes, he did.

Q. Did Mr. Winters buy all of the approved TBA in the station?

A. Yes, he did.

Q. Did Mr. Winters buy from Mr. DeLonge all of the approved service station equipment——

A. Yes, he did.

Q. —that Mr. DeLonge was willing to sell?

A. That's right.

[fol. 3031] Q. Was there any non-petroleum products which Mr. Winters did not buy?

A. There was some there which he did not buy.

Q. Do you recall the approximate value of that?

A. Of the petroleum products?

Q. Of the non-Richfield petroleum products.

A. Non-approved. I don't believe the value would be in excess of $50.

Q. Were there any non-approved TBA present at the station?

A. Yes, there was some.

Q. Did Mr. Winters buy that?

A. No.

Q. What was the approximate value of that?

A. Well, roughly, between three and five hundred dollars, not to exceed $500.

Q. Mr. DeLonge testified he had an offer from Mr. DeHoag to buy out his complete inventory of petroleum products and TBA, and tools and equipment for approximately $5400. Were you aware of that?

A. That was my understanding at the time.

Q. Do you know the approximate purchase price of the products and inventory which Mr. Winters bought from Mr. DeLonge?

A. I believe it was around $1600.

[fol. 3032] Q. What did the difference between the $5400 and the $1600 represent.

A. The biggest difference was DeLonge's garage repair equipment, which would include brake relining machines,

hydraulic jacks, a steam-cleaning machine, and equipment of that nature, which is used in the garage repair business and not in service stations; also, merchandise and stock, and those repair parts used in that business, and some of this non-approved TBA.

Q. I have forgotten whether I asked this. What in the aggregate was the total of the non-Richfield petroleum products and non-approved TBA which Mr. Winters failed to buy from Mr. DeLonge?

A. I am sure it would not be over $550.

Q. In the aggregate?

A. That is the non-approved TBA and petroleum products.

The Court: Had anyone ever inspected the place to see that he was putting in this expensive equipment?

The Witness: I believe that equipment had been there for quite some time. It had been there all the time I had been calling on him. Actually I think he purchased it from the former operator.

The Court: In other words, he evidently assumed that that equipment, at least, would be taken in when any change would be made?

[fol. 3033] The Witness: He may have, but he wanted to —I mean, he used the equipment in his type of operation. That is, he wanted to do the garage repair, as well as the service station, whereas this man Winters did not and he had no need for that equipment or merchandise at all.

The Court: But when DeLonge went in there, it was there, and Richfield supervised that change?

The Witness: Yes, your Honor. But, you understand, he wanted the equipment. I mean, he was planning and intending to do that type of work, and at that time much of that equipment was scarce, and so people could ask almost any price they wanted, whether they sold it to the operator, or to anyone outside.

The Court: The point I am asking on is why, if Richfield had such control over what goods were sold, why did Richfield allow him to buy four or five thousand dollars worth of equipment, and then put in a man who didn't want it?

The Witness: Of course, I wasn't there at the time, but I presume it was because DeLonge was going to operate the

station himself and hire mechanics to run the back end. In other words, the service station was his primary business, whereas the garage was a sideline. Actually, he had one or two mechanics, depending on the amount of work, who worked on a commission basis.

The Court: I see. All right.

[fol. 3034] By Mr. Paradise:

Q. The bulk of this equipment you are talking about was the garage equipment; is that correct?

A. That's right.

Q. Mr. DeLonge testified, when he was a witness in this case, that he was told by Mr. Dinsmore on the morning of this check-out, and he said about a half an hour after the termination lease was offered, that he was told, "to be out of here by 8:00 o'clock in the morning and take all that trash with you." Were you present during all of these conversations?

A. I was present all the time from the time we originally arrived until approximately 3:00 o'clock in the afternoon.

Q. Will you state what occurred, by way of conversation or anything else, with respect to the time that Mr. DeLonge was either asked to leave the station, or when a change of operation was discussed, and things of that nature?

A. Yes. There was no mention of any time made as to when the operation would change until the inventory was completed; that is, completed as to pricing and the actual value of the merchandise and equipment was fixed at which Winters was going to buy, which would have been about 2:00 to 3:00 o'clock in the afternoon.

Q. During the time Mr. Dinsmore was in the station did he make any statement such as Mr. DeLonge stated?

A. Mr. Dinsmore never made any such statement.

[fol. 3035] Mr. Paradise: Complete your answer.

A. While I was there.

Q. Were you there at all times on that day with Mr. Dinsmore?

A. I was there at all times.

The Court: Regardless of what he said, he made short shrift of the operation. You got him out of there in a few hours, isn't that true?

The Witness: No, sir. Left the station approximately 3:00 o'clock in the afternoon, and at that time Winters, DeLonge and myself discussed when would DeLonge discontinue the operation and Winters begin, and it was decided that if Winters could arrange his night shift—you understand the station was open 24 hours.

The Court: Yes.

The Witness: If he could get a night man to begin work at midnight, that was when the break would take place.

The Court: All right. I still say that is making short shrift in ending an operation and putting another man in.

The Witness: We very seldom take over a day, sir, to make a change of dealers.

The Court: I know that.

By Mr. Paradise:

Q. Was there any discussion, Mr. Knudsen, on the subject matter of whether or when Mr. DeLonge should remove from the premises any of the items that Mr. Winters did [fol. 3036] not buy?

A. Toward the end of the inventory or the latter part of the inventory, at least, Mr. DeLonge, as we or Winters told him he did not want certain items of merchandise, he began to remove it from the shelves and put it in boxes and put it out beside the rear part of the station. And I remember distinctly on two different times that I told DeLonge that he didn't have to do that right now, that that could wait and he could take his time in getting it out. No one ever told him that he had to remove it right away or by 8:00 o'clock in the morning or by any particular time. He could take two or three days, as much time as he needed to remove all of his equipment that he was going to take with him.

Q. Was there any discussion concerning the time when he would or should remove the repair tools and equipment from the garage?

A. No, sir, there was not, other than the fact that he could take two or three days or as much time as he needed.

Mr. Paradise: No further questions.

The Court: He evidently did not understand it that way. All right, go ahead.

Cross-examination.

By Mr. Hall:

Q. Mr. Knudsen, can you describe briefly the physical aspects of this so-called service station? Is it like most of [fol. 3037] the service stations placed by itself on one plot of ground, all alone as an automotive service station?

A. It is a rather peculiar type of station. It is not like any of our normal service stations. It covers a large area and has a roof over the entire area, where some of our stations have open lots. This has a roof over the whole premises.

Q. Are there any other businesses in operation in this particular building occupied by the station?

A. There were not at that time.

Q. And does the lease cover the entire premises which you have described?

A. Yes, it does.

Q. And the property, roughly speaking, would encompass somewhere between a quarter and a half a block or more, wouldn't it, or the main part of that one corner on the corner of Fourth?

A. That is true?

Q. That is true. And I believe you stated that the premises that were used by Mr. DeLonge as a repair shop or something like that had been used previously for a repair shop before he went in there?

A. I really don't know. I wasn't in the territory before Mr. DeLonge was in there.

Q. You don't know what it was used for before about [fol. 3038] a month after he came in, is that right?

A. Well, it had been used as a service station. As far as the back part, I don't know.

Q. You were introduced to Mr. Winters by Kisor, is that true?

A. No, that is not true. I met Mr. Winters on my own.

Q. Hadn't Mr. Kisor known Mr. Winters for some time?

A. He knew of him, yes, sir. Whether he actually knew him or not I don't know. Mr. Kisor referred me to Mr. Winters.

Q. Mr. Kisor referred you to Mr. Winters?

A. Yes, that is true.

Q. What is what I wanted to know. Do you know or do you remember hearing Mr. Kisor state to Mr. DeLonge that he had had Winters in mind for that station for over eight months?

A. Mr. Kisor told me in——

Q. Just answer that question.

A. Will you ask it again?

Q. I asked you if you heard Mr. Kisor tell Mr. DeLonge that?

A. I didn't hear him tell him that, no.

Mr. Hall: I don't believe there is anything further from this witness, your Honor?

The Court: All right. Any redirect?

Mr. Paradise: No further questions.

[fol. 3039] Mr. Hall: I would like to in connection with this introduce or have marked for identification——

Mr. Paradise: Mr. Knudsen, will you wait for just a moment, please?

Mr. Hall: Just a moment, Mr. Knudsen.

Mr. Dixon: It is 20A, Mr. Childress.

The Clerk: Government's Exhibit 20-A marked for identification.

(The document referred to was marked Plaintiff's Exhibit 20-A for identification.)

The Court: All right, take the stand.

Mr. Hall: I don't think it will need Mr. Knudsen.

The Court: Just one question. You said that you talked about running a repair shop, a radio repair shop?

The Witness: Radiator repair shop.

The Court: Where were they going to run it?

The Witness: In the back of our service station building.

The Court: I thought that was occupied by the repair shop for the automobiles?

The Witness: At one corner there was a wash rack for washing cars.

The Court: Yes.

The Witness: And he intended to put it in that place.

The Court: Did he tell the man he wanted to sell it to or you to transfer it to he would continue that? Is that what [fol. 3040] he told you?

The Witness: I didn't understand you.

The Court: Didn't you say he had somebody in contemplation?

The Witness: Oh, DeHoag told me that.

The Court: Yes.

The Witness: This was Mr. DeHoag that was going to run the radiator repair shop, not DeLonge. Delonge was running the garage. DeHoag was going to run the garage part of it as well as the radiator repair shop.

The Court: DeHoag had been picked by you as the classical operator of the service station?

The Witness: He was sent to us by Mr. DeLonge.

The Court: That is right. And you had Winters instead?

The Witness: That is right.

By Mr. Hall:

Q. Mr. Knudsen, who was H. C. Buck?

A. At that time H. C. Buck was the assistant division manager in charge of merchandising.

Mr. Hall: That is all, thank you. Your Honor, the Government will offer into evidence Government's Exhibit No. 20-A.

The Court: All right, it may be received.

The Clerk: 20-A in evidence.

(The document referred to was marked Plaintiff's Exhibit 20-A and received in evidence.)

[fol. 3041] Howard J. Brower, called as a witness by the defendant, being first sworn, was examined and testified as follows:

The Clerk: What is your name?

The Witness: Howard J. Brower.

Direct examination.

By Mr. DeMartini:

Q. Will you state your name and address?

A. Howard J. Brower, 1925 East Glenoaks Boulevard, Glendale.

Q. By whom are you employed, Mr. Brower?

A. Richfield Oil Corporation.

Q. And what is the nature of that employment?

A. I am manager of the real estate and land department of the marketing division.

Q. How long have you had that department?

A. Since March of 1937.

Q. What are your duties as such manager of the real estate department?

A. Well, I handle all marketing problems relating to real estate. I administer all fee owned or leased service station or bulk plant properties. I supervise the records, payments of the rentals and taxes, and I supervise the acquisition of new locations both by lease and purchase, that is, service station and bulk plant locations. I direct the operations of [fol. 3042] the division real estate personnel in their program of acquisition of new service stations and bulk plant sites, and in the renewing of leases. Our operations are handled through three divisions. Each has its own division or division real estate manager and staff. It is the duty of these people to originate all propositions relative to the acquisition of new service stations and bulk plants, the renewal of expiring leases, and the sale of inactive fee properties. These people are in direct contact with our lessors in the field on any matters pertaining to our tenancy and their properties. The proposals originating in the division are then routed to the home office real estate and land department through the division manager.

I direct the operations of the division real estate personnel in the sale of inactive fee properties, analyze the proposals from the divisions relative to purchase, lease, sublease, sale or improvement, that is, the improving of any locations, either approve or disapproving these proposals, subject to final approval or rejection of the vice-president, Mr. King.

Q. Are you familiar as to what is referred as to the leased out or L-O station as your marketing department uses it?

A. Yes. I would say that an L-O station is one acquired by Richfield through purchase or lease as an outlet for Rich- [fol. 3043] field products, that that is separate and distinct

from the 3-C proposition when the lessor is also our lessee and dealer.

Q. In other words, you do not refer to the 3-C as an L-O station?

A. No.

Q. Insofar as the Richfield's ownership or interest is involved in the L-O type of stations, will you describe the several categories into which they fall?

A. Well, in order to segregate them we have used the classifications A, B, C, and D. By A we mean a fee owned service station. B is where we own the improvements on leased land. C is where we lease the improvements and the land, and in this case we call those the lessor built type where the improvements were constructed along the lines of plans and specifications furnished by Richfield. The D classification is also one in which we lease both land and improvements, but unlike the C classification, these improvements were not constructed to Richfield's plans and specifications.

The Clerk: Defendant's Exhibit W marked for identification.

(The document referred to was marked Defendant's Exhibit W for identification.)

By Mr. DeMartini:

Q. I will show you an instrument marked Defendant's [fol. 3044] Exhibit W for identification, entitled "Compilation of Total Number of Richfield's L-O Stations Showing Portion and Percentage Thereof Originally Created as Service Stations by Richfield as of December 31, 1950" and ask you if you know what this compilation represents?

A. Yes. This refers to L-O service stations and segregates those created by Richfield as opposed to those not so created.

Q. What do you mean by the term "created by Richfield"?

A. This refers to the stations built by Richfield or by the property owner under agreement with Richfield on sites which had never theretofore been used or occupied as a service station handling any petroleum products.

Q. Will you state the manner in which this compilation was prepared?

A. Well, first, cards were prepared, individual cards, segregating the L-O stations into the four categories A, B, C, and D. On these cards was listed the service station number and the address, etc. I then personally checked the marketing department files and the contract and lease files on each individual service station. By this check and by perusing the questionnaire and survey and the correspondence or photographs contained in these files, I was able to refresh my memory as to previous knowledge I had of locations, and if I found that the service station had been built by Richfield or built for Richfield through agreement with [fol. 3045] the lessor on a location which theretofore had never been used as a service station or for the sale of petroleum products, I classified that location as "created by Richfield," and so identified it on the card by marking an "R" in the corner. Those that I found were not created by Richfield I marked with the letter "N".

There were some instances, naturally, that I was not able to find in the files complete identification as to the creation, and invariably in those cases where I was not absolutely sure I classified them as not created by Richfield. This compilation was all done by me or at my direction.

Q. And as a result of that compilation you show of the total of all of the four classifications that 81.3 per cent, or 1,092 stations of a total of 1,343 in existence as of December 13, 1950, were created by Richfield in accordance with this definition?

A. That is right.

Mr. DeMartini: I offer this into evidence, your Honor.
Mr. Dixon: Objected to as irrelevant and immaterial.
The Court: Overruled.
The Clerk: W in evidence.

(The document referred to was marked defendant's Exhibit W and received in evidence.)

By Mr. DeMartini:

Q. Will you state briefly, Mr. Brower, your experience [fol. 3046] in connection with the sale, purchasing and leas-

ing of real estate in the States of California, Oregon, Washington, Arizona, Nevada, and Idaho? I think I got them all in there.

A. Our western market.

Q. In particular with respect to gasoline service station properties, that is, your experience in leasing those properties?

A. You mean prior to my being with Richfield, my experience?

Q. In carrying it through.

A. Well, from 1926 to 1932 I was connected with the Wales-Smith Company, which later became the S. I. Wales Company, realtors dealing primarily in business properties. The firm was very closely connected with the Doheny interests and for that reason we had quite a bit to do with the operations of the Pan-American Service Stations. While we dealt primarily in business properties, right from the start my forte was service stations. I seemed to start out on those and stayed with them all through the years. During that time the company I was with purchased for major oil companies in excess of 50 service station properties and, of course, in weeding out 50 properties we examined and appraised and analyzed hundreds of pieces. Also through my experience with this company we made many appraisals for major oil companies. We were called on continuously for appraisals.

[fol. 3047] In 1931—it was then the S. I. Wales Company—Mr. Wales was appointed by the receiver of the Richfield Oil Corporation and by Stone-Webster Company to make the appraisal on all the marketing properties of Richfield, and it fell upon me to make most of these appraisals from Canada to Mexico. At the completion of that chore in 1932 I was then offered the position I now hold. Having been through the receivership and then through the new company until the present date, I have had occasion to analyze thousands of pieces of property that have been submitted to the corporation and the receivership prior to that for lease and sale and have, naturally, on these occasions have had many appraisals to make.

Q. Is it a true statement that you have been in charge of all marketing of real estate properties for Richfield Oil Corporation since its inception in March of 1937?

A. Yes.

Q. Mr. Brower, are you familiar with the usual manner in which service station leases prescribe the method of computing and paying rentals thereunder? I am referring to a complete service station leased for a long term basis, without any restriction as to products to be sold on the premises, that is, strictly a lease of a service station without any operational limitation attached?

A. Yes.

[fol. 3048] Mr. Dixon: May the record show, your Honor, a continuing objection to this line of questioning on the grounds of irrelevance and immateriality?

The Court: I gathered this was preliminary to something. I cannot see the materiality of the testimony that would come as yet. I am waiting to see. Overruled.

By Mr. DeMartini:

Q. Will you state what the manner of fixing rentals in such leases is?

A. Do you mean——

Q. What is the usual method prescribed for fixing rentals in a service station lease of the type which I have described?

A. Well, there are two manners. One is a gallonage rental with a minimum monthly guarantee, and another one would be a flat monthly rental without the gallonage overriding clause.

Q. Where there is a gallonage rental is it usual to also have a guarantee minimum, you state?

A. Yes, more often than not.

Q. On the basis of your experience and knowledge that you just outlined, are you familiar with the lowest fair rental values of such service station properties in the States which I mentioned during the period from 1946 to date as expressed in cents per gallon?

A. I believe I am.

[fol. 3049] Q. What is that?

A. One and one-half cents per gallon for a fully equipped service station.

Q. Will you state whether under present conditions, and with your knowledge as an expert, whether the tendency is

for that gallonage rental to increase or decrease as of this date?

A. Well, as of this date the tendency would be upward, if anything. In fact, there are many indications that our contemporary major oil companies are paying as high as two cents a gallon for this type of unit.

Q. Is it also true that service stations, or leases of property for service station purposes are sometimes on a bare land basis?

A. That is right.

Q. And there is a gallonage rental involved?

A. You mean where possibly we would lease a piece of land and own the station on it, but just lease the land?

Q. No, where you lease a piece of unimproved land.

A. Oh, yes; yes.

Q. And are those lands sometimes leased on a gallonage basis?

A. Oh, yes. In most cases, I would say.

Q. What, in your opinion, is the going market value on a gallonage basis of the lease of bare land for service station [fol. 3050] property?

A. Well, I would say the going price on the market in this marketing area is one cent per gallon on that type of location.

Q. Now, with respect to those leases that have a minimum guaranteed rent, and also a gallonage rental, is it correct to say that the minimum that would be payable under those leases when computed on a gallonage basis would be the gallonage basis specified in the lease?

A. Yes.

Mr. DeMartini: I think that is all.

The Court: Any questions?

Mr. Somerville: No questions.

The Court: All right. Step down.

(Witness excused.)

The Court: Call your next witness.

Mr. DeMartini: Mr. Semple, will you please take the stand?

[fol. 3051] EDWIN M. SEMPLE, JR., called as a witness by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

Direct examination:

The Clerk: What is your name, please?
The Witness: Edwin M. Semple, Jr.
The Clerk: How do you spell your last name?
The Witness: S-e-m-p-l-e.

By Mr. DeMartini:

Q. Where do you reside, Mr. Semple?
A. 14465 Rose Avenue, Los Angeles.
Q. What is your present occupation?
A. I am supervisor of statistics in the Marketing Department, Richfield Oil.

Mr. DeMartini: Will you mark this, please?
The Clerk: Defendant's Exhibit X, marked for identification.

(The document referred to was marked Defendant's Exhibit X, for identification.)

By Mr. DeMartini:

Q. Mr. Semple, I will show you an instrument marked Defendant's Exhibit X, for identification, and ask you whether you caused to have that instrument prepared.
A. Yes, I did.
[fol. 3052] Q. Will you state, first, what the instrument is?
A. The instrument is a comparison of the number of independent resale, 337 resale, accounts lost during the period January 1, 1946 to and including December 31, 1950.
Q. Now, referring to the three columns, the three main headings, what do they represent?
A. Well, the compilation is further segregated between the number of accounts that were lost at expiration, the number of accounts that were lost prior to the time of the expiration of the contract, and then the total number lost, and those three categories further broken down as to

whether or not the accounts in question had a painting agreement in effect at the time the account was lost.

Q. These columns are totaled at the bottom, and which show in the instance of the number lost at the expiration of the contract, in which a painting agreement was in existence at the time of loss the figures, and then "Yes" and "No" represent what?

A. That represents the existence of a painting agreement at the time the account was lost. "Yes" indicating that there was one in effect. "No" indicating there was not one in effect.

Q. So that of the total number lost at the expiration of the contract, namely, 107, 26 did not have a painting contract in effect, and 81 did have a painting agreement in [fol. 3053] effect?

A. That's right.

Q. Then the second column represents what?

A. That represents the number of accounts lost prior to the normal expiration of the contract.

Q. And that again is segregated into those that had painting agreements in effect at the time of the loss, and those which did not have painting agreements at the time of the loss?

A. That is correct.

Q. And those which represent a total of 407 are segregated into 303, which represent those which had a painting agreement in effect at the time of loss, and 104, which did not have a painting agreement in effect at the time of loss?

A. That is correct.

Q. Summarizing the aforesaid, the total number lost was 514, and of those 130 did not have painting agreements in effect at the time of loss and 384 did have painting agreements in effect at the time of loss?

A. That is correct.

Mr. DeMartini: The defendant offers this in evidence.

Mr. Dixon: It is objected to, your Honor, as irrelevant and immaterial, and particularly,——

The Court: It may be received.

Mr. Dixon: All right, your Honor.

[fol. 3054] The Clerk: Defendant's Exhibit X in evidence.

(The document, heretofore marked Defendant's Exhibit X, for identification, was received in evidence.)

Mr. DeMartini: That is all.

The Court: Any questions?

Mr. Dixon: Yes, your Honor.

Cross examination.

By Mr. Dixon:

Q. Mr. Semple, you referred to statistics here as expressing the number lost. What do you mean "lost"? Do you mean that when the sales contract 337 expired that it was either not renewed by you or the other party to the contract, that is, by Richfield or the other party to the contract?

A. Well, by "accounts lost" I refer to the fact that they discontinued purchasing Richfield products.

Q. Well, when?

A. At a time during the normal term of the contract or at the normal expiration of the contract.

Q. In other words, these statistics merely relate to those contracts which terminated through the natural expiration of the term; is that right?

A. No, sir.

Q. Or then they were terminated by the action of either [fol. 3055] Richfield or of the other party to the contract, the dealer; is that correct?

A. That's correct.

Q. Do you know how many of these so-called lost accounts were terminated by Richfield?

A. No, I do not.

Q. Did you try to figure how many of them were terminated by Richfield, in compiling these statistics?

A. No.

Q. Do you know how many of them were canceled by the dealer?

A. No, that follows, because it would be the balance of the accounts lost.

Q. You have made an effort in compiling these statistics to show how many of these so-called lost accounts were

terminated by the dealers prior to the normal expiration date of the contract; is that correct?

A. That is correct.

Mr. Dixon: I renew my objection, your Honor.

The Court: All right. I will renew the ruling.

Mr. Dixon: A very effective cross examination.

The Court: All right.

Mr. Paradise: Mr. Will.

Mr. Dixon: May I call this witness back for one question, Judge?

[fol. 3056] The Court: Yes. Ask him from there. You may stand there.

By Mr. Dixon:

Q. Do you know how many of these painting agreements Richfield collected on, Mr. Semple?

Mr. DeMartini: I object to that as not proper cross examination.

The Court: What was that?

Mr. Dixon: How many of the painting agreements that are referred to in this Exhibit X were collected on by Richfield, that is to say, that Richfield collected from the dealer?

The Witness: No, I do not know.

Mr. Dixon: You don't know that?

The Witness: No.

Mr. Dixon: That is all.

The Court: All right.

(Witness excused.)

[fol. 3057] David Will, called as a witness by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

Direct examination.

The Clerk: What is your name, please?

The Witness: David Will, W-i-l-l.

By Mr. Paradise:

Q. Mr. Will, in what capacity have you been employed by Richfield Oil Corporation?

A. Manager of contract-lease department.

Q. Are you familiar with the forms of contracts known as the 3-C and the 337 contracts?

A. I am.

Mr. Paradise: Will you mark, this, please?

The Clerk: Defendant's Exhibit Y, marked for identification.

(The document referred to was marked Defendant's Exhibit Y, for identification.)

Mr. Paradise: I have a copy of this for your Honor.

The Court: Is that another form?

Mr. Paradise: This is an additional compilation, which we think is material.

The Court: All right.

By Mr. Paradise:

Q. Mr. Will, I will show you Defendant's Exhibit Y, for [fol. 3058] identification, which is entitled "Compilation of 337 and 3-C Contracts In Effect As of February 28, 1951," and ask if that was prepared by you or under your supervision and direction?

A. It was.

Q. Will you state what it represents, first?

A. I personally supervised the compilation——

Q. Not how it was prepared. We will come to that later. What does the compilation represent?

A. It is a compilation of 337 and 3-C contracts in effect as of February 28, 1951, segregating such contracts into four groups. Each such group, A to D, inclusive, describes the ratio which the minimum quantity of gasoline, the quantity that the dealer obligates himself to purchase, specified in the dealer's sales contract bears to the dealer's average monthly purchases for the year preceding the date of the contract. Where such average monthly purchasers were not available at the time the contract was written, the ratios were computed on the basis of the estimated gallonage.

Q. In what manner was this compilation prepared?

A. I supervised the compilation of the forms designed for the purpose of computing percentagewise, speaking of

the ratio, that the minimum gasoline quantity in the contract bears to the average past purchases of the location. Where these figures were not available, it was based on the estimate of what the dealer himself or our representa-
[fol. 3059] tive felt the station would do.

Q. That estimate was an estimate made at or before the date the contract was made; is that correct?

A. That is correct.

Q. And that estimate was contained in the file?

A. Right.

Q. Now, calling your attention to these items on this form where it says, "Group A—Less Than 75%" and opposite that is the number 408 in column 2, will you state, so that it will be more explanatory, what does that precise figure 408 refer to?

A. It is the number of 337 and 3-C sales contracts in effect as of that date, where the minimum gasoline figure was less than 75 per cent of the average past purchases by the account, if such records were available. If it was a new location, it would be less than 75 per cent of the account's estimate of what the account would do or our representative's estimate of what the account would do.

Q. When you refer to the minimum figure, are you referring to the figure under the word "minimum" in the 337 form of sales contract?

A. I am; the quantity which the dealer obligates himself to purchase.

Q. And is that the same figure also referred to in the
[fol. 3060] 3-C form of contract?

A. It is.

Q. In making this compilation, did you come across any 3-C sales contracts that called for the dealers purchasing his entire requirements?

A. I did.

Q. Are those contracts included in this compilation?

A. They are.

Q. Where did you classify them?

A. The 90 per cent and over group.

Mr. Paradise: The defendant offers Exhibit Y in evidence.

The Court: All right.

Mr. Paradise: No further questions.
The Court: It may be received.
The Clerk: Exhibit Y in evidence.

(The document, heretofore marked Defendant's Exhibit Y, for identification, was received in evidence.)

Mr. Dixon: No questions.
The Court: Step down.

(Witness excussed.)

The Court: Have you another short witness?
Mr. Paradise: Yes, I have another short witness.
The Court: All right.
[fol. 3061] Mr. Paradise: Mr. Peterman.

JOHN F. PETERMAN, called as a witness by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

Direct examination.

The Clerk: What is your name, please?
The Witness: John F. Peterman.

By Mr. Paradise:

Q. You are an employee of the Richfield Oil Corporation, Mr. Peterman?
A. Yes, sir.
Q. In what capacity?
A. Administrative assistant in the Accounting Department.
Q. Mr. Peterman, I want you to explain, if you will, please, this instrument which I will show you, which represents an additional compilation.
Mr. Paradise: Will you mark this, please?
The Clerk: Defendant's Exhibit Z, for identification.
The Court: We will be running out of letters now, and will have to double up.

(The document referred to was marked Defendant's Exhibit Z for identification.)

[fol. 3062] Mr. Paradise: Do you have Defendant's Exhibit M, please?

(The document was handed to counsel.)

By Mr. Paradise:

Q. Mr. Peterman, I show you Defendant's Exhibit Z, for identification, which is stated to be a comparison of gasoline gallonage sold to Richfield L-O stations, dealer 3-C stations, and dealer stations compared with the total gasoline gallonage manufactured by all companies in the states mentioned. By examining this Exhibit Z, and also by referring to the stipulation of facts, which is Defendant's Exhibit M, will you state where these respective figures came from?

Mr. Paradise: I might state to the court, for purposes of simplicity, that this compilation is on a comparative basis, and it shows the relative ratios of gallons sold through L-O stations, with quantities, total quantities manufactured, and I am putting this witness on primarily to show the figures, which are already in evidence in a different exhibit.

By Mr. Paradise (Continuing):

Q. Will you state, Mr. Peterman, the source of each of these figures in relation to Defendant's Exhibit M, the stipulation of facts?

A. The gallonage reflected by this statement, as it applies to the L-O stations, the dealer 3-C stations and the dealer stations has been taken from Table IV, supporting the stipulation identified as Defendant's Exhibit M-1, and specifically [fol. 3063] identified as Defendant's Exhibit M-5.

The Court: I presume the gallonage as to all states comes from the Bureau of Mines, does it not?

The Witness: No, your Honor, the gallonage I was referring to is the gallonage sold by Richfield to the service stations.

The Court: I know that, but the gallonage for the companies in the field comes from the Bureau of Mines, does it not?

The Witness: Yes. Now you are referring to the first column?

The Court: To the first column.

The Witness: The gallonage shown in the first column under the caption, "Total gallons manufactured" is the total gallons of gasoline manufactured by all companies in the states referred to in the title of the report, and that, for the purposes of this report here, has been taken from Table No. V, which is Defendant's Exhibit M-6. Getting back to the statement you made, that is taken from the Bureau of Mines' report, as it applies to all states but the state of Idaho.

The Court: They don't have it?

The Witness: In the state of Idaho we obtained those figures direct. There is only one refinery there.

The Court: I see. All right.

[fol. 3064] By Mr. Paradise:

Q. Now, the column entitled "Richfield Dealer Stations," does that refer to the so-called 337 stations, as we have identified them here?

A. The 337 stations, that is correct.

Q. Turning to the second page, and referring to the statistics for the year 1950, is this a correct interpretation of this compilation, that the number of gallons sold to Richfield L-O stations constituted 2.71 per cent of the total gallons manufactured by all companies in the area for that year?

A. That is correct.

Q. And that the gallons sold through dealer 3-C stations constitute .34 per cent of all gallons manufactured by those companies in that area?

A. That is correct.

Q. And that the gallons sold to the so-called 337 stations constitute 1.14 per cent of the total gallons manufactured?

A. For that year; that is correct.

Mr. Paradise: For that year. The defendant offers Exhibit Z in evidence.

Mr. Dixon: That is objected to as irrelevant and immaterial.

The Court: It may be received.

The Clerk: Exhibit Z in evidence.

[fol. 3065] (The document, heretofore marked Defendant's Exhibit Z, for identification, was received in evidence.)

The Court: Look at the trouble that is going to save me. If I write an opinion, I can just put them in, and I don't have to go through and pick them out.

Mr. DeMartini: We want to switch attorneys in the middle of the stream, your Honor.

The Court: That is all right.

By Mr. DeMartini:

Q. Mr. Peterman, I will show you a certain instrument entitled, "Statistical Record of Rentals and Rental Costs," and ask you what that instrument is, or what those instruments are.

A. This is an instrument which is maintained by the accounting department for the purpose of recording thereon by months the gallonage of gasoline delivered to the service station, and it reflects, after the computation is made, the rental which is paid and received on that particular service station.

Q. And those cards relate to which service stations?

A. The card I am looking at now relates to the service station located at 2304 Northwest Burnside Street, Portland, Oregon.

Q. Will you state what the gallonage of that station, as reflected on those records, was for the period from January [fol. 3066] 1, 1942 to March 16, 1942?

A. There isn't a total on here for that, but it is made up of three figures: 11,856 gallons for January, 10,750 gallons for February, and 5,350 gallons for the period March 1st to March 16th.

Q. Now, will you also state what the gallonage, as reflected from those records, was for the period from January 1, 1944 through the month of April, 1944?

A. In the month of January, 1944, the gallonage was 8,256, the gallonage for February was 8,250, and the gallonage for March was 11,833, and the gallonage for April is 10,416, and the card indicates there was no gallonage for the period from May 1 to May 3rd, inclusive.

[fol. 3067] Q. Now, will you state what the highest gallonage was during the period from March 1942 through April 1944, with the exception of the month of August 1942 in which month it did exceed 18,000 gallons?

A. Well, do you want the highest month besides that month?

Q. By examining that instrument, can you give us a rough calculation of what the average gallonage was during the period commencing April 1942 and ending April 30, 1944? That is a period of 25 months.

A. I would estimate that it averages approximately 11,000 gallons a month.

Q. In fact you had already computed that figure, had you not?

A. Yes.

Q. And the average is 11,531 gallons?

A. That is correct.

Mr. DeMartini: I may state, your Honor, this was for the purpose of refuting certain testimony of Mr. Edgar, an L-O operator.

The Court: All right.

Mr. DeMartini: That is all, Mr. Peterman.

Mr. Dixon: Just a couple of questions, your Honor.

The Court: All right.

[fol. 3068] Cross-examination.

By Mr. Dixon:

Q. Mr. Peterman, I notice that your Exhibit Z does not contain any column indicating the total gallons of gasoline which was sold through the retail outlets within the area covered by your exhibit. Do you happen to know what that figure was for the year 1950?

A. Well, I believe the statement does show the gallonage sold to retail outlets, if you are considering——

Q. I am talking about all of the retail outlets to which anyone manufacturing that gasoline referred to in column one of Exhibit Z sold that gasoline to. Do you understand my question?

A. Would you mind repeating it?

Q. Does your Exhibit Z show how much of the gasoline manufactured was sold to all of the retail outlets within the area covered by Exhibit Z for resale purposes?

A. No, sir.

Mr. Dixon: That is all. And you don't know—pardon me.

Q. You do not know what that amount is, do you?
A. No, sir.

Mr. Dixon: Thank you. That is all.
The Court: All right, gentlemen. You have concluded a long day with a lot of folios. I think you have written a lot of testimony down there.
[fol. 3069] Mr. DeMartini: Judge, may I interrupt you? We have Mr. Daley of the FBI here who was subpoenaed as a witness. We have about three questions to ask him, if you want to get rid of him.
The Court: What is the FBI doing here? Well, all right. Being that they try to be nice to lawyers and judges and doctors, an FBI man, we will take him on.

James E. Daley, called as a witness by the defendant, being first sworn, was examined and testified as follows:

The Clerk: What is your name, please?
The Witness: James E. Daley, D-a-l-e-y.

Direct examination

By Mr. DeMartini:

Q. What is your address, Mr. Daley?
A. 2335 Glenada Avenue, Montrose, California.
Q. What is your occupation?
A. I am a special agent with the Federal Bureau of Investigation.
Q. In connection with the investigations in this case will you state how many 337 and 3-C dealers you talked to in the district under your supervision?

Mr. Dixon: If the court please, I object to that question on the ground that it is wholly irrelevant and immaterial.
The Court: I do not believe it is material how many he [fol. 3070] talked to. As a matter of fact it was at my suggestion the Government eliminated some of the dealers.

And I can't see what difference it makes as to how many he talked to or he did not talk to.

Mr. DeMartini: It was our thought, your Honor, that it had a bearing on the selectivity of witnesses and the showing of a planned program.

The Court: No, it has nothing to do with the case. As a matter of fact we are priding ourselves that in the trial of these cases we are not following the teaching in the East where they call everything a big case that goes on forever and ever. This very selectivity is very helpful. The pattern of conduct, whether it amounts to restraint or not, can be established as well by 10 or 20 as by two or three hundred.

The objection will be sustained.

Mr. DeMartini: No further questions.

The Court: All right.

Mr. Paradise: If the court please, there is a matter, I think, involving this subject matter, and that is the comment your Honor made some time ago. I have forgotten the exact reference in the transcript to the subject of cumulative testimony. It was our understanding of your Honor's remarks as to a large number of witnesses it referred to the pattern testimony, and that the type of witness who was not called was the so-called L-O operator as to whom we had a pattern established.

[fol. 3071] Now, Mr. DeMartini's question of this witness does not relate to the L-O operator. It related strictly to the independent.

The Court: It is not material in this or any one case how many witnesses the Government brings before the court. If any argument is possible to the effect that the Government has picked out certain particular things, it can be made on the basis of the record and not on the basis of what other witnesses may have been examined or have not been before the court, or the number of people that they did examine or they did not examine. It is not material at all.

Ultimately, I may say this, the Government's case being in, that the testimony on the part of the Government certainly established a pattern for every one of the three groups. So that if they had sought to introduce more, they would probably have heard from me.

So I do not see any materiality how many witnesses they

examined or how broad their investigation was. I do not see any argument can be based on it.

Mr. DeMartini: Thank you.

The Court: All right, Mr. Daley.

Mr. DeMartini: Off the record.

(Brief discussion off the record.)

The Court: Gentlemen, tomorrow is a legal holiday. I had forgotten it. It is red on the calendar and it is one of the very few legal holidays that we have. So we will recess [fols. 3072-3075] until Thursday morning at the regular hour.

(Whereupon, a recess was taken until 10:00 o'clock a. m., Thursday, May 31, 1951.)

[fol. 3076] Thursday, May 31, 1951, 10:00 A. M.

The Court: Gentlemen, I am sorry I was delayed but I had a conference with attorneys, unannounced, and we have been taking all this time. I have been here since ten minutes to 9:00. So let us go on.

Mr. Paradise: Your Honor, before proceeding with another witness I have a motion to make concerning Government's Exhibit 30. I do not know the proper procedure in this regard, if the court please, but since the close of the last session, when that exhibit was offered, we are informed by counsel for the Government that it is not an instrument signed by the person whom it purports to be, but is a group of instruments prepared by Government counsel as copies of instruments found in the defendant's file.

The basis of my motion is that we are also informed by Government counsel that the instrument is not complete, that is to say, that there were check marks on other portions of the instruments that are not included here, therefore, the instrument is not what it purports to be.

The Court: All right.

Mr. Dixon: If the court please, the Government represents, as we did at the time it was offered, that that is a copy made by Mr. Hall from a document of identical import and language and form in the files of the defendant, or made

[fol. 3077] from the original which was in the files of the defendant and which was examined by Mr. Hall. Mr. Hall does inform me that there may have been some other marks on those exhibits by way of favorable comment or grades. Perhaps Mr. Hall can better state those himself. But there is no question, at least the Government represents, that everything contained thereon was in fact contained on the original of which that is a copy. And it was offered subject to verification or production of the original by the defendant. We still feel that it is properly in evidence for that purpose.

The Court: I think it was used on cross examination, was it not?

Mr. Dixon: Yes, it was, your Honor.

The Court: Let me see.

Mr. Dixon: On page 1912.

The Court: Yes. I am looking at it now.

Mr. Dixon: You will find the offer and you will find——

The Court: Just a moment.

Mr. Dixon: —previous inquiry concerning that form immediately preceding and following that page.

The Court: I think the only relevancy of this matter, gentlemen, is this: That counsel called attention of the witness to the fact that a deportment card, which it was his contention only applies to L-O operators, was filed in another type of station. And I think his answer was that he had no [fol. 3078] business doing that in the first place.

Mr. Paradise: I see.

The Court: I think, in view of the limited scope of the examination, the only thing, really, in the record is that such a report was made. If you insist on it, I will mark it for identification. If you want to, I will have you put in, in conjunction with it, the entire set.

Mr. Paradise: Yes. I have no desire to do that, if your Honor please, because these records, if they still exist, are in Seattle. Those records are destroyed currently and I do not know that they exist. So I will be glad to——

The Court: For the limited purpose—for instance, here is the point, gentlemen, when it comes to the rules of evidence. Where you refer to a document and the purpose is limited, supposing it had been a clipping; suppose he had

taken a clipping from the newspaper. Was this Seattle or Portland? I forget.

Mr. Dixon: Seattle.

The Court: Supposing he had taken a clipping from the P. I., which is the main paper or the Times, or the afternoon paper—you see, I always know what newspapers are in town. Supposing they had a clipping and they showed it to Mr. King and stated: Look, Mr. King, here is an item that so and so while inspecting the station had met with an accident and he had asked him if that would not indicate to [fol. 3079] him that possibly the man was examining the station when he had no business to. Regardless of the proper foundation, that means of bringing a fact to the attention of the witness brings the document in not as proof but merely as bringing out a possible admission a man may have done that, and that is all that document is in there for.

Mr. Paradise: Thank you. On your Honor's statement I will withdraw the motion.

The Court: All right.

Mr. Paradise: I did not want to leave the record in the state that would indicate that unauthorized stocks was the only thing that that form was used for, even by that person Mr. King testified to.

The Court: Let us have it this way: It is understood, gentlemen, that you picked out only certain markings and there are other markings in which you are not interested.

Mr. Dixon: That is correct, your Honor.

The Court: These even mark that the boy had a clean shave and haircut. I had better watch myself here.

[fol. 3080] Just one minute before we go on. I want to talk to Mr. Childress.

(Discussion between the court and the clerk.)

Mr. Dixon: May it please the court, may it be stipulated between counsel for the government and the defendant that J. T. Chapman is the assistant division manager in charge of merchandising for the Northern Division of the defendant, and that he was in that position on May 22, 1950?

Mr. Paradise: So stipulated.

HUGH RANKIN, called as a witness by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

Direct examination:

The Clerk: What is your name, please?
The Witness: Hugh Rankin.
The Clerk: How do you spell your last name?
The Witness: R-a-n-k-i-n.

By Mr. DeMartini:

Q. What is your occupation, Mr. Rankin?
A. Paymaster for Richfield Oil Corporation.

The Court: Speak a little louder. You are the man they want to have talk up.
Mr. DeMartini: Yes, I can hardly hear you.

[fol. 3081] By Mr. DeMartini:

Q. In such capacity you have charge of the original pay roll records of the Richfield Oil Corporation; is that correct?
A. That's right.
Q. Did you examine those records this morning with respect to an employee, R. W. Dart, who is located at Portland, Oregon?
A. I did.
Q. What is his occupation?
A. Special retail representative.
Q. How long has he held that position?
A. Since November 1, 1949.

Mr. DeMartini: That is all, Mr. Rankin.
Mr. Dixon: No questions.
The Court: Step down.

(Witness excused.)

JOHN F. PETERMAN, recalled as a witness by and on behalf of the defendant, having been previously sworn, was examined and testified as follows:

Direct examination:

The Clerk: It is John F. Peterman?
The Witness: That's right.
The Clerk: You have been heretofore sworn.

[fol. 3082] By Mr. DeMartini:

Q. I will show you Defendant's Exhibit Y, Mr. Peterman, and ask you whether you are familiar with that document.
A. I am.
Q. Can you state whether there are included in the compilations set forth therein any 337 contracts which were executed prior to the month of August, 1948?
A. There are.

The Clerk: Defendant's Exhibit AA, marked for identification.

(The document referred to was marked Defendant's Exhibit AA, for identification.)

Mr. DeMartini: I will hand a copy to your Honor.
The Court: Another chart?
Mr. DeMartini: Yes, sir.

By Mr. DeMartini:

Q. I will show you a document entitled, "L-O Stations Leased by Richfield. Statement of Rentals Paid and Received," marked Defendant's Exhibit AA, for identification, and ask you whether you are familiar with that instrument.
A. I am.
Q. Was it prepared from the original records of the corporation?
A. Yes, sir.
Q. Will you describe, briefly, what that instrument purports to be?

[fol. 3083] A. This instrument reflects for the years 1946 to 1950, inclusive, the rentals paid and received on leased

out stations leased by Richfield, together with the gasoline gallonage sold to those stations, and the rental rates per gallon for rentals received and paid, including the amount of excess rental cost absorbed by Richfield.

Q. By "excess rental cost absorbed," you mean the difference between the amounts paid by Richfield and the amounts collected from the L-O operators; is that correct?

A. That is correct.

Q. Do I also understand that this instrument includes those incidents of stations wherein the bare land is leased by Richfield, and on which Richfield itself erected improvements at its own cost, and thereafter sublet the premises to an L-O operator?

A. It does include such rentals.

Mr. DeMartini: I will offer this in evidence.

Mr. Dixon: Objected to, your Honor.

The Court: What did you say?

Mr. DeMartini: I said I will offer it.

Mr. Dixon: The usual objection, your Honor.

The Court: The usual objection, and the usual ruling.

These are nice: In imagination I can see how I can use these figures.

The Clerk: Defendant's Exhibit AA in evidence.

[fol. 3084] (The document referred to, heretofore marked Defendant's Exhibit AA, for identification, was received in evidence.)

Mr. DeMartini: Mark this, please.

The Clerk: Defendant's Exhibit AB, marked for identification.

(The document referred to was marked Defendant's Exhibit AB, for identification.)

By Mr. DeMartini:

Q. I will show you an instrument entitled, "Richfield's Investment In L-O Stations As Of December 31, 1950," marked Defendant's Exhibit AB, for identification, and ask you what that instrument purports to be. First, was it prepared from the original records of the corporation?

A. It was.

Q. Second, what does it purport to be?

A. The instrument reflects Richfield's cost of land purchased with respect to L-O service stations, and also the cost of the improvements installed at L-O service stations.

Q. And those improvements have been depreciated; is that correct?

A. These figures are the depreciated values.

Q. Do I also understand that these figures do not include improvements of the nature of tanks, pumps, compressors, hoists, signs, highboys?

[fol. 3085] A. That is correct.

Mr. DeMartini: I will offer this in evidence, your Honor.

The Court: It may be received.

Mr. Dixon: The same objection, for the record, your Honor.

The Court: The same ruling.

The Clerk: Defendant's Exhibit AB in evidence.

(The document referred to, heretofore marked Defendant's Exhibit AB, for identification, was received in evidence.)

Mr. DeMartini: Will you mark this, please?

The Clerk: Defendant's Exhibit AC, marked for identification.

(The document referred to was marked Defendant's Exhibit AC, for identification.)

By Mr. DeMartini:

Q. I will show you an instrument marked Defendant's Exhibit AC, for identification, entitled "Cost of Construction of Refining Facilities Under Defense Supplies Contracts," and ask you if that instrument was prepared from the original record of the corporation.

A. It was.

Q. What does it purport to show, Mr. Peterman?

A. This instrument sets forth the cost of refining facili-

[fol. 3086] ties installed under Defense Supplies Corporation Contract No. ND-N-2139, dated February 3, 1942, and also the cost involved in refining facilities installed under Defense Supplies Corporation contract No. WD-N-30367, dated February 20th, 1943.

Mr. DeMartini: No further questions.
Mr. Paradise: You did not offer that.
Mr. DeMartini: I don't think I am going to offer that at this time.

By Mr. DeMartini:

Q. You specified the amounts, did you not?
A. I didn't give the segregated amounts, no.

Mr. DeMartini: I think you had better do that.
Mr. Dixon: It is all right with me if you offer it, and I will just make my usual objection.
Mr. DeMartini: I will offer the exhibit in evidence.
Mr. Dixon: The same objection, your Honor, for the record.
The Court: It may be received.
The Clerk: Defendant's Exhibit AC in evidence.

(The document referred to, heretofore marked Defendant's Exhibit AC, for identification, was received in evidence.)

Mr. DeMartini: That is all, Mr. Peterman.

[fol. 3087] Cross examination

By Mr. Dixon:

Q. Mr. Peterman, I direct your attention to page 32 of Government's Exhibit 26-A, and particularly direct your attention to the gallonage of gasoline reported sold to the L-O stations by Richfield during the years 1946 to 1950, inclusive, as stated therein. I now direct your attention to the item entitled, "Gasoline gallonage," under the heading "L-O Stations Leased By Richfield," for the years 1946 to 1950, inclusive, as set forth in your Exhibit AA, and ask you as to whether the figures reported in Government's Exhibit 26-A for the years 1946 to 1950, inclusive, are the same as the figures reported in Defendant's Exhibit AA for the same years.
A. No, sir.
Q. Do the figures as set forth in Defendant's Exhibit AA, for gasoline gallonage for the years 1946 to 1950, respectively, represent in that exhibit the gallonage of gasoline

sold to all of the L-O outlets with which the defendant has leases of the 542 type?

A. No, sir.

[fol. 3088] Q. What do these figures, then, under "gasoline gallonage" actually represent in Exhibit AA?

A. If you will note, the Exhibit AA reflects the statement there that that does not include any L-O stations which are fee-owned.

Q. So that the difference between the gallonage figures for the years 1946 to '50, inclusive, in Government's Exhibit 26-A and those contained in Defendant's Exhibit AA represent the gallonage sold to those stations in which the fee is owned by Richfield, is that correct?

A. That is correct.

Q. Now with reference to Exhibit AC does the amount of $20,000,000-plus in that exhibit represent the total cost to Richfield of the refinery facilities constructed pursuant to those contracts referred to in Exhibit AC?

A. That is correct.

Q. What amortization privilege or what amortization basis for tax purposes was taken by Richfield in amortizing those expenses, if you know?

Mr. DeMartini: Objected to as incompetent, irrelevant and immaterial.

The Court: Overruled. Oh, no. Where they are giving gross figures, we want to see how they are carried on the books, whether there are any deductions from them, so the ultimate capital investment is ascertained.

[fol. 3089] A. I do not have sufficient knowledge to answer that under oath.

The Court: Those are capital investments on which they are entitled to deductions and on which, in case of sale, they would be entitled to a capital loss or capital gain.

By Mr. Dixon:

Q. Do you know as a fact whether this cost of $20,000,000-plus was amortized by Richfield for tax purposes over a five-year period under the provisions of the law pursuant to which these contracts were entered into, Mr. Peterman?

A. I do not know that as a matter of fact, no.

Q. Can you make it your business to make that determination?

A. I could.

Q. And indicate to us at your earliest convenience as to whether or not these properties represented by the $20,000,000-plus cost to Richfield have in fact been completely charged off by Richfield under the five-year provisions of the law mentioned for tax purposes? Do you understand my question?

A. I do.

Q. In other words, we would like to know for tax purposes the value at which these properties, speaking about these particular ones, now——

A. I understand.

Q. —referred to in Exhibit AC represented by these [fol. 3090] expenditures, at which value they are carried on the books of the corporation for tax purposes at the present time, and as to whether they have been completely charged off or depreciated off for tax purposes by Richfield under the provisions of the Act.

Mr. Paradise: Mr. Dixon.

Mr. Dixon: Yes.

Mr. Paradise: If it will serve your purpose, I will stipulate that, subject to our objection as to materiality, in the tax treatment of these facilities that Richfield Oil Corporation applied for and obtained a certificate of necessity covering both of the two facilities.

Mr. Dixon: That does not quite answer my question. If counsel will stipulate that these expenditures or the costs have been completely depreciated to a point where this $20,000,000-plus cost has been charged off by Richfield within the five-year period, it will not be necessary for Mr. Peterman to give us the information as requested.

Mr. Paradise: If you are speaking about depreciated for only income tax purposes——

Mr. Dixon: That is right.

Mr. Paradise: —I think we can stipulate. And I will ascertain during the recess to make sure whether that is a correct statement.

Mr. Dixon: That is what we are endeavoring to determine. [fol. 3091] And if it is stipulated that for income tax

purposes these expenditures have been completely depreciated and charged off, it will not be necessary for Mr. Peterman to give us the information requested. Thank you, Mr. Peterman.

KENNETH G. LOVIN, called as a witness by the defendant, being first sworn, was examined and testified as follows:

The Clerk: What is your name, sir?
The Witness: Kenneth G. Lovin, L-o-v-i-n.
Mr. Hall: I could not hear your, sir.
The Witness: Kenneth G. Lovin.

Direct examination.

By Mr. DeMartini:

Q. What is your occupation?
A. Senior clerk, Richfield Oil Corporation, Pasadena branch.

The Court: Just a moment.

By Mr. DeMartini:

Q. What did you say your occupation was?
A. Senior clerk.
Q. Senior clerk?
A. Yes.

The Court: All right, go ahead. That is all right.

By Mr. DeMartini:

Q. I will show you a series of photographs which have been marked Defendant's Exhibit AD for identification and [fol. 3092] ask you when those photographs were taken?
A. A portion were taken on the 25th of May and a portion were taken, the balance were taken on the 29th.
Q. Of this year?
A. Yes, of this year.
Q. Now, were you present when those photographs were taken?
A. I was.

Q. And do they fairly represent the condition of the service station buildings and facilities as of the dates that they were taken?

A. They do.

Q. I will ask you to identify each of these by location, if you will.

A. This No. 1 item is Gene Gebel, service station located on West Alosta Avenue, which I think is part of Highway 66, and that is in the town of Glendora. You want both of these?

Q. Yes.

A. The second one is of the same station. The next is a service station of Ray L. Johnson.

Q. Will you speak louder, please, so they can hear you?

A. A service station operated by Ray L. Johnson, 954 West Holt in Pomona. The next picture is also of the same location.

[fol. 3093] The next picture is of a dealer, George Anglen. It is located at 1693 North Garey in Pomona. The following picture is of the same station.

The next picture is of Clair V. Ward's service station at 2601 West Mission in Alhambra. The following picture is of the same station.

The next picture is of a station operated by E. W. Lineback at 321 West Mission in Alhambra. The following picture is of the same location.

The next picture is of a service station operated by Jones & Coutts. It is located at Fair Oaks and Glenarm in Pasadena. The next picture is of the same station.

The next picture is of a station operated by W. T. Coffman. It is located at 14208 East Garvey Boulevard, Baldwin Park.

The next picture is of a station operated by Theodore Jones which is located at 8303 Mission Drive, San Gabriel. That completes them.

Q. Do you have any knowledge as to what type of service stations these are, that is to say, whether they are independent service station dealers on Richfield's form 337 or on Richfield's form 3-C?

A. They are all independent, on the 337 sales contract, with the exception of the Clair V. Ward station which is a 3-C deal.

[fol. 3094] Q. Is it correct to state that an examination of those photographs show in each instance that Pennzoil is displayed for sale?

A. Yes, that is true.

Q. Is it also true that all of these stations lie within an area described as from Los Angeles city limits at approximately Fremont Street in Alhambra, or just to the side of that, through to Ontario, and from Valley Boulevard to and including Azusa and such towns through there?

A. They do, that is true.

Mr. DeMartini: I may state that that is the description which Mr. Ellis gave of his territory, your Honor.

The Court: Well, he had a batch of tires in one of them. He did not get the markings on the tires. They looked like second-hand tires to me.

Mr. DeMartini: This testimony is merely to refute the testimony of Mr. Ellis.

The Court: Pennzoil.

Mr. DeMartini: Yes, who claimed to be an assiduous salesman, and nonetheless could not sell Pennzoil in this area. That is all.

The Court: Well, all right.

Mr. Dixon: We object, your Honor. We do not think it is competent for the purposes mentioned. But if your Honor likes the pictures, we have no objection to them.

[fol. 3095] Mr. DeMartini: We offer them into evidence.

The Court: All right, they may be received.

The Clerk: Defendant's AD in evidence.

The Court: I am not approving counsel's statement as to what they show. I am receiving them as showing that in some of the stations photographed Pennzoil products are exhibited and in one of them he has quite a group of—what do you call them, Pennzoil dispensers? Is that what you would call them, or what?

Mr. DeMartini: I think they are called highboys.

The Court: What do they call them?

Mr. DeMartini: Highboys.

The Court: Highboys. All right, it may be received.

(The document referred to was marked Defendant's Exhibit AD and received in evidence.)

Mr. Paradise: Mr. Dixon, in the interval since Mr. Peterman testified, he has checked with his office and I am now in a position to stipulate that, subject to our objection as to materiality, the cost figu-es of the refinery installations described on Defendant's Exhibit AC have for income tax purposes only been fully depreciated within a five-year period covered by the data.

Mr. Dixon: Thank you.

Mr. Paradise: Mr. Day.

[fol. 3096] David E. Day, called as a witness by the defendant, being first sworn, was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: David E. Day.

Direct examination

By Mr. Paradise:

Q. Mr. Day, what is your present status with the defendant corporation, Richfield Oil Corporation?

A. I am vice-president in charge of manufacturing.

Q. How long have you occupied that office?

A. Since April 1945.

Q. Prior to that time, but nevertheless commencing in the time of the incorporation of Richfield Oil Corporation, what office have you held?

A. I was assistant to A. M. Kelly who was vice-president in charge of manufacturing for the Richfield Oil Corporation.

Q. For the purpose of describing your experience generally will you state what your occupations have been with respect to petroleum refining operations prior to 1937?

A. From 1923 on I was refinery engineer in charge of selection of processes and installation of processing equipment. From 1937 to 1945 I was in charge of the technical end of the manufacturing department, and in that position had charge of the processes selection and processes deter-[fol. 3097] mination, and kept myself familiar with refining processes and processes used in that industry gener-

ally. Since 1945 I have been in charge of both operations and the technical matters in connection with the manufacturing department.

[fol. 3098] Mr. Paradise: May I have these marked, please?

The Clerk: Defendant's Exhibit AE, marked for identification, and Defendant's Exhibit AE-1, marked for identification.

(The documents referred to were marked Defendant's Exhibits AE and AE-1, for identification.)

Mr. Paradise: Defendant offers in evidence Defendant's Exhibits AE and AE-1, which consists, respectively, of two contracts between the Richfield Oil Corporation and Defense Supplies Corporation, the first contract identified as Exhibit AE being dated February 3, 1942, and the second contract identified as AE-1 being dated February 20, 1943. I might mention to the court that these were covered by a request for admissions prior to the trial, and that the government has copies of them.

The Court: All right.

The Clerk: Exhibits AE and AE-1 in evidence.

Mr. Dixon: Just our usual objection, your Honor, on relevancy.

The Court: Overruled.

(The documents referred to, heretofore marked Defendant's Exhibits AE and AE-1, for identification, were received in evidence.)

By Mr. Paradise:

Q. Mr. Day, I show you the two contracts between Rich-[fol. 3099] field and Defense Supplies Corporation, dated in 1942 and 1943, respectively, and ask you to describe briefly what refinery facilities were installed pursuant to those contracts, respectively.

A. As to the contract of February 3, 1942 there were installed an addition to an existing alkylation unit, an addition to some super-fractionation units, and isomerization unit, and related equipment which was auxiliary equipment in connection with those units.

Q. Is that the equipment referred to as having cost $2,647,000 in Exhibit AC?

A. I haven't seen the defendant's Exhibit AC, but that was the cost, yes.

(Counsel hands document to witness.)

A. Yes.

Q. And that is the equipment to which you have referred that was installed under that contract?

A. Yes.

Q. What equipment or facilities were installed under the second contract?

A. Under the second contract an entire additional alkylation unit was installed, some additions to the superfractionation equipment, a catalytic cracking unit, and auxiliary equipment, as before.

Q. Are those the facilities the cost of which is referred to in Defendant's Exhibit AC?

[fol. 3100] A. That is the second item, yes.

Q. What was the approximate cost of those facilities?

A. $17,854,000.

Q. Calling your attention to the second contract, the 1943 contract, Mr. Day, and to the portion of paragraph 1 of the contract that appears on page 2, which provides as follows:

> "Seller shall use its best efforts to expand said additional facilities and shall endeavor to maintain work on said expansion day and night insofar as the requisite labor and materials are available. Seller shall use its best efforts to complete such expansion as soon as possible, and not later than March 1, 1944."

Did Richfield so use its best efforts to work day and night, as provided for in the contract——

A. Yes.

Q. —to complete facilities?

A. Yes.

Mr. Paradise: Will you mark these, please, as AE-2 and AE-3?

The Clerk: Defendant's Exhibits AE-2 and AE-3, marked for identification.

[fol. 3101] (The documents referred to were marked Defendant's Exhibits AE-2 and AE-3, for identification.)

Mr. Paradise: Defendant offers in evidence two telegrams, both of which were similarly contained in a request for admissions, the first being a telegram dated December 2, 1941, addressed to Mr. C. S. Jones, president of Richfield Oil Corporation, and signed by Ralph K. Davies, Deputy Petroleum Co-ordinator, and the second being a wire dated September 9, 1943, addressed to E. W. Isom, Sinclair Refining Company, and signed by George L. Parkhurst, Chief, New Facilities and Economics Section, Refining Division.

Mr. Dixon: Objected to as irrelevant and immaterial.

The Court: Overruled.

The Clerk: AE-2 and AE-3 in evidence.

(The documents referred to, heretofore marked Defendant's Exhibits AE-2 and AE-3, for identification, were received in evidence.)

By Mr. Paradise:

Q. Mr. Day, Defendant's Exhibit AE-3 is this wire of September 9, 1943, addressed to Mr. E. W. Isom, Sinclair Refining Company, and signed by George L. Parkhurst. It is rather short, and I would like to read it to you, because I want to ask a couple of questions about it.

> "Understand that you desire in connection with certificate of necessity application for Richfield Oil Corpo-
> [fol. 3102] ration 100 Octane Aviation Gasoline project now under construction confirmation that this project is being installed as a part of expansion program requested by PAW to meet indicated shortage of one hundred Octane Aviation Gasoline particularly on West Coast. This will confirm that fact."

Signed, "George L. Parkhurst," and then his title.

Is the gasoline project referred to in this wire the facilities that you have described that were installed under these contracts?

A. Yes.

Q. Who is Mr. E. W. Isom of the Sinclair Refining Company, to whom this wire is addressed?

A. Mr. E. W. Isom was and is vice-president in charge of research for the Sinclair Refining Company.

Q. Do you know why this wire was addressed to Mr. Isom and refers to Richfield's project?

A. Well, Mr. Isom was representing Richfield in these negotiations with the Petroleum Administration For War.

Q. This wire states that this was, and I am quoting only a part, that this was an expansion program requested by PAW. Who is PAW?

A. "PAW" are the initials standing for Petroleum Administration for War, and was the government organiza-[fol. 3103] tion operating under the Secretary of the Interior, having charge of petroleum operations as they affected the government during the war.

Mr. Dixon: May the record merely show a continuing objection on the part of the government to this line of questioning?

The Court: All right.

Mr. Paradise: May it be stipulated, Mr. Dixon, that those telegrams were sent by those persons?

Mr. Dixon: Oh, yes. So the position of the government may be clear for the record, we do not contest or deny any of these documents were entered into or sent and received, or that Richfield did not build the facilities provided for therein.

The Court: All right.

Mr. Dixon: We merely contend that insofar as the issues in this case are concerned that they are irrelevant and immaterial.

The Court: Overruled.

Mr. Paradise: Perhaps for the record it should show the following admissions were requested under Rule 36, filed October 13th, 1950: That the telegrams were sent by the persons signing the same in their respective stated capacities, on behalf of the Petroleum Co-ordinator for War and the Petroleum Administrator for War, respectively, and [fol. 3104] were instrumentalities of the United States of America, and that Defense Supplies Corporation, party to the agreements above described, was an instrumentality of the United States of America.

By Mr. Paradise:

Q. Mr. Day, the two contracts with Defense Supplies Corporation, which you have before you, refer to the construction by Richfield of facilities for the manufacture of 100 octane aviation gasoline. Are those facilities usable in the manufacture of motor gasoline?

A. They are.

Mr. Paradise: I have one more short chart, your Honor.

The Court: Another one?

Mr. Paradise: Yes.

The Clerk: Government's Exhibit AF, marked for identification.

(The document referred to was marked Defendant's Exhibit AF, for identification.)

By Mr. Paradise:

Q. Mr. Day, I will show you Defendant's Exhibit AF, for identification, which consists of two pages, and I would like to direct your attention first to the second page. Will you explain the significance or meaning of the figures stated on that page?

A. That first figure shown is the capacity for manufacturing of aviation gasoline of the facilities installed by Richfield pursuant to these two contracts, the 15,000 bar- [fol. 3105] rels of aviation gasoline, 100 octane aviation gasoline per day.

The second figure is the equivalent capacity, or the capacity of the same facilities for the production of motor gasoline, which is 10,705 barrels of gasoline per day.

Q. Those figures are per day?

A. Those are per day.

Q. How many gallons of gasoline does a barrel contain?

A. 42.

Q. How do you account for the fact, Mr. Day, that the same facilities appear to have a smaller capacity for the manufacture of motor gasoline than they do for the manufacture of aviation gasoline?

A. Well, the facilities installed were of two types. The alkylation units and the catalytic cracking units actually produced more gasoline per barrel of crude processed.

The super-fractionation units did not produce more gasoline, but simply took from a barrel of gasoline some components of particularly high octane quality, which could be used in aviation gasoline, so that a portion of the facilities made more gasoline, and, consequently, could make more motor gasoline, whereas the other portion of the facilities simply took gasoline from the motor gasoline category, and put it into the aviation gasoline category, and, therefore, did not add to the total gasoline produced. [fol. 3106] Q. I see. Now, the figures that are represented on the second sheet show the capacity for the manufacture of motor gasoline of 10,705 barrels per day. Does that capacity relate solely to the facilities installed pursuant to the two contracts with the Defense Supplies Corporation?

A. Yes.

Q. Now, turning to the first page of this exhibit, will you explain what those items represent?

A. The items on the first page, item 1, is the capacity of Richfield's refinery to produce motor gasoline prior to the installation of the facilities installed under the two contracts, and that capacity was 32,875 barrels per day of motor gasoline.

The second statement is Richfield's refinery capacity for the production of motor gasoline after the completion of the facilities installed under the two contracts, which was then a total of 43,580 barrels per day.

Q. That is also of motor gasoline?

A. Of motor gasoline.

Q. Yes.

A. And the third statement is the percentage of increase of motor gasoline producing capacity made possible by the new facilities, which is 32-1/2 per cent.

Q. Now, the two contracts that you refer to are the contracts we have been talking about, between Richfield and [fol. 3107] the Defense Supplies Corporation; is that correct?

A. They are.

Q. And this increase of capacity relates solely to the new facilities installed pursuant to those contracts?

A. Pursuant to those contracts, yes.

Q. Then this figure of 32.5 per cent reflects increase of capacity for motor gasoline over the capacity prior to the installation of those Defense Supplies Facilities and is what resulted by the construction of those facilities; is that correct?

A. That is correct.

Mr. Paradise: Defendant offers in evidence Exhibit AF.

Mr. Dixon: The same objection, your Honor.

The Court: It may be received.

The Clerk: Exhibit AF in evidence.

(The document referred to, heretofore marked Defendant's Exhibit AF, for identification, was received in evidence.)

By Mr. Paradise:

Q. The additional facilities that we have discussed, have they been used for the manufacture of motor gasoline at all?

A. Yes, they have.

Q. To what purchaser did Richfield sell the quantities of aviation gasoline which it manufactured during World War II?

A. To Defense Supplies Corporation.

[fol. 3108] Q. To any other purchaser?

A. No, not to my knowledge. I think it was entirely to Defense Supplies Corporation.

Q. That was a wartime measure, was it not?

A. Yes.

Q. Did the end of World War II have any effect on the quantities of aviation gasoline purchased by the Government through Defense Supplies Corporation from Richfield?

A. Yes.

Q. What effect did it have?

A. Well, the amount of gasoline purchased by Defense Supplies was cut down from something like 17,000 barrels a day immediately prior to the cessation of hostilities to two to three thousand barrels a day subsequently.

Mr. Paradise: Will you mark this, please?

The Clerk: Defendant's Exhibit AG, marked for identification.

(The document referred to was marked Defendant's Exhibit AG, for identification.)

By Mr. Paradise:

Q. Mr. Day, I show you a telegram dated August 15, 1945, which, as I recall, was either V-J Day or the day following, addressed to Richfield Oil Corporation and signed by George Stoner, Associate Director, Office of Derense Supplies, and ask you if you received that wire in your capacity as head of the refinery. I believe at [fol. 3109] that time you were assistant to Mr. Kelly, were you not?

A. In August of 1945, no. I was at that time vice-president in charge of manufacturing.

Q. Oh, yes.

A. Yes, I did receive that wire.

Q. Was it pursuant to this wire that Richfield cut down its sales and deliveries of aviation gasoline to the government in the figures that you mentioned,——

A. It was.

Q. —at the end of World War II?

A. It was.

Q. How soon after that date did these new refining facilities commence making motor gasoline?

A. Practically immediately, as soon as we could do the physical switch-over.

Mr. Paradise: The defendant offers in evidence Exhibit AG.

Mr. Dixon: The same objection.

The Clerk: Is this admitted, your Honor?

The Court: It may be received.

The Clerk: Exhibit AG in evidence.

(The document referred to, heretofore marked Defendant's Exhibit AG, for identification, was received in evidence.)

Mr. Paradise: No further questions.

[fol. 3110] Cross-examination.

By Mr. Dixon:

Q. Mr. Day, when was the work contracted for under these contracts completed?

A. As to the first contract, I believe it was in February, of 1943, and as to the second contract I believe it was in September of 1944. That is approximate. I would have to refresh my memory to give you the exact dates.

Q. What was the refining capacity of Richfield after the completion of these facilities, that is, the construction of these additional facilities, insofar as normal or regular gasoline is concerned, as distinguished from aviation gasoline?

A. That was given in my previous statement.

Q. But I am asking you now what it is.

A. Approximately 43,000 barrels per day of motor gasoline, after the completion of these facilities.

Q. Did you make any aviation gasoline at all, Mr. Day?

A. We did.

Q. Are you making any aviation gasoline today?

A. We are.

Q. How much are you making today, or refining today?

A. Approximately, somewhere in the neighborhood of seven to eight thousand barrels per day. That is a day.

[fol. 3111] Q. So, out of your 43,000 total capacity, 7,000 of that is being used today to manufacture aviation gasoline; is that correct?

A. We have considerably more than 43,000 barrels capacity today.

Q. What is your present capacity for refining motor fuel today, as distinguished from aviation fuel?

A. About 46,000 barrels, 46-47.

Q. That is independent of your capacity for aviation gasoline?

A. That is total gasoline capacity. It is 44 per cent of 108,000. I can't give you that very quickly.

Q. Now, I am getting a little confused myself, Mr. Day. What I would like to know is what is your present refining capacity for motor gasoline.

A. As of today?

Q. Per day, yes.

A. Somewhere in the neighborhood of 48,000 barrels.

Q. What is your present refining capacity for aviation gasoline per day?

A. It would be approximately the same as was previously stated, about 15,000 barrels per day.

Q. About how many?

A. About 15,000 barrels per day.

Q. So that your refineries today are able to turn out [fol. 3112] 48,000 barrels of motor fuel or gasoline, and 15,000 barrels of aviation gasoline?

A. No, a total of 48,000 barrels of gasoline, and whatever aviation gasoline you make has to be deducted from that, Mr. Dixon. You can't distinguish one from the other.

Q. I understand that.

A. You have to have a total.

Q. In other words, am I correct, Mr. Day, that you can use either facility to manufacture motor gasoline?

A. That is correct. You can use these facilities for making either motor gasoline or aviation gasoline, except as I described previously.

Q. So that the same facilities may be used to turn out either type of gasoline, aviation gasoline or motor gasoline?

A. That is correct.

Q. And your present capacity, then, for all types of gasoline per day at your refinery is what?

A. About 48,000 barrels.

Q. At the conclusion of, or, rather, at the completion of the construction under these contracts, I believe you testified your capacity was about 43,000 barrels per day?

A. That is correct.

Q. Is that correct?

A. That is correct.

Q .So it is a fact, Mr. Day, that you have added to your [fol. 3113] refining capacity since the completion of these projects that you have referred to, that were requested by the PAW?

A. We have.

Q. What additional capacity have you added to your refineries since the completion of these other projects under the PAW contracts?

A. Those additions have been largely in the nature of removing bottlenecks, as we say in the refinery, rather than in the installation of any complete units. There have been no complete new units installed at the refinery since the equipment mentioned under those two contracts, but we have increased our straight-run crude facilities and we have learned how to operate our existing facilities a little better.

[fol. 3114] Q. But you have in fact increased the capacity, the refining capacity of the facilities of Richfield?

A. That is true.

Q. Since the completion of the PAW work referred to?

A. Yes.

Mr. Dixon: That is all.

The Court: Any redirect?

Redirect examination.

By Mr. Paradise:

Q. This I do not think is too important but I want the record to be straight about it. Mr. Day, I think that the statement was made that the same facilities could be used for the manufacture of either motor gasoline or aviation gasoline. Is that precisely correct?

A. Not precisely correct. It is correct as amplified in my prior statement, in that certain of the facilities actually make more gasoline which gasoline can be used either as aviation gasoline or as motor gasoline, whereas certain of the facilities simply take from gasoline aviation components which can be used as aviation gasoline, and those facilities, of course, cannot be used to make more motor gasoline.

Q. Then the capacities you gave of 48,000 barrels per day of motor gasoline as an approximation and 15,000 barrels per day of aviation gasoline are not cumulative?

A. Oh, no, no.

[fol. 3115] The Court: One is as good as the other. He made that statement.

A. The 48,000 is total.

The Court: That is right, the 15,000 is part of the 48?

The Witness: That is correct, sir.

until Tuesday morning, June 5th, for argument, and we will recess subject to call.

(Whereupon, a recess was taken until Tuesday, June 5, 1951 at 10:00 o'clock a.m.)

[fol. 3121] Tuesday, June 5, 1951. 10:00 A. M.

ARGUMENT

The Court: All right, gentlemen, cause on trial.

Mr. Dixon: May it please the court: The complaint in this case charges the defendant with a violation of Section 1 of the Sherman Act and Section 3 of the Clayton Act. The specific offense charged is described, in particular, in paragraph 16 of the complaint, which is, in effect, that the defendant has entered into and is operating under contracts consisting of written and oral agreements and understandings between itself and independent service station operators, which contracts are an unreasonable restraint of and substantially lessen competition in interstate trade and commerce in petroleum products and automotive accessory products. The complaint then proceeds in further detail to describe the type of contract and arrangement referred to in paragraph 16 of the complaint.

The evidence in this case has shown that the restraints complained of, which the government contends have been effected through these contracts and understandings involved in 1950 a market for all products in excess of $45,000,000. This amount consisted of sales in gasoline in the amount of $39,025,113, greases and oils in the amount of $2,546,127, and TBA products, with a 30 per cent figure off that I will explain later, in the amount of $3,476,088.

The Court: What are you reading those figures from? [fol. 3122] Mr. Dixon: These figures, your Honor, are taken from Government's Exhibit 26-A.

The Court: That is all right. I just wanted to know.

Mr. Dixon: I should have given you the source.

The Court: Oh, it does not matter, but just for my notes, because in following the argument I like to know if there is an exhibit that embodies them, because then if I have any question, I can look at the exhibit.

Mr. Dixon: The number of written contracts involved are

in excess of 4500 in amount. Specifically, there are 1,343 written contracts in the form of a sublease which is contained in Form 542, Government's Exhibit 1-G. There are 261 lease forms, that is, leases from the operator to Richfield, 261 sublease forms back from Richfield to the operator, and 261 sales agreements or contracts involved in the 3-C type of arrangement, all of which are exemplified by Government's Exhibits 4, 4-A and 4-D on the sublease, 4-B and 4-C on the sales contract arrangement, and are known as Defendant's Forms 362, 668, and 783, respectively.

The Court: May I interrupt you?

Mr. Dixon: Yes.

The Court: This is a good stopping point. There was a little delay in disposing of another matter that is urgent.

(Another case called.)

[fol. 3123] The Court: All right. Now we can continue, gentlemen. I am sorry I interrupted you.

Mr. Dixon: It is all right, your Honor.

There are 1,361 written sales agreements and 853 painting agreements which were entered into at the same time as the sales agreements mentioned, and 241 paint agreements which were entered into subsequent to the execution of the sales agreements, which are on Form 337 and are identified in the record as Government's Exhibits 5-G and 5-F, respectively. These latter types of written arrangements are entered into under what have been referred to in the trial as the 337 type of arrangement.

The total amount, therefore, of written agreements is 4,581 of the type mentioned. In addition to these agreements there are oral arrangements and understandings which the Government contends are applicable to every one of the three types of outlets involved in this case.

As to gasoline and petroleum products it is the contention of the Government that this arrangement is oral in its nature as to the L-O type of arrangement and is written, of course, as to the other two types, the 3-C and 337 types of arrangement, as is expressed by the written type of sales contract.

As to tires, batteries, and accessories the Government contends that the arrangement is oral in nature as to all

types of the three stations outlets involved in this case. [fol. 3124] There are, therefore, 7,546 written and oral arrangements which the Government contends are before the court for its consideration of the type which we will discuss in a moment.

Now, the commerce involved exists or is effected through 2,965 retail outlets. These consist of 1,343 of the so-called L-O type of arrangement which is covered by the lease arrangement only and the oral arrangement dealing with gasoline and petroleum products and automotive accessories, 261 of the 3-C type of outlets, and 1,361 of the 337 type of outlets.

I believe the evidence has clearly shown that the defendant is engaged in interstate commerce in the manufacture and distribution of petroleum products as well as the sale and distribution of automotive accessories.

The record shows that insofar as the written types of contract are concerned that they are approved either at the divisional offices of the defendant, of which there are three in number, located, as your Honor recalls, in the State of California, Washington, and that the contracts come to the respective offices in those states from the various other states for the particular state for approval, and that some of the contracts involved are required to be approved at the main office of the defendant in Los Angeles. Hence there can be no question and we will not take any time to discuss the interstate commerce phase of the evidence, or the question that the contracts involved here are entered [fol. 3125] into in the course of interstate trade and commerce in the products involved.

The Court: I think you had better leave that for them, because my first impression is that all these transactions are interstate in character. There is not one that is localized. They all contemplate the distribution of products which are a part of an interstate flow, and that the same applies to contracts relating to accessories.

I would rather the defendant took that burden of showing what there is in the record to show the contrary, leaving, of course, the final determination to a later date. [fol. 3126] Mr. Dixon: Thank you, your Honor.

The Court: I merely approve your thought that the record for the present, at lease, will call for the defendant

to indicate as to what they think as to the local character of these transactions. It may well be in regard to one or two of these stations, if you took the trouble you might be able to determine that as of a particular date perhaps the things that went into the station, both into the tanks and the other part, had a local problem, but it would be a very difficult job to disentangle that from the entire business of the corporation, which is interstate.

Mr. Dixon: It is the contention of the government that these contracts and arrangements, which are exemplified by the written forms of the contracts and the oral evidence of the understandings and the course of dealing between the defendant and the operators operate to close this market in excess of forty-five millions of dollars from all competition from other suppliers of petroleum products and automotive accessories.

The government further contends that these contracts have had that intended purpose, insofar as the defendant is concerned, and that insofar as the law is concerned that they are in violation of both section 1 of the Sherman Act and section 3 of the Clayton Act.

The government further contends that the decision of [fol. 3127] this court, affirmed by the Supreme Court, in the case against the Standard Oil Company of California is directly applicable and in point, and is the law governing the case before this court.

We will, therefore, during the course of this argument make some comparisons between some of the figures on commerce in the Standard case and will discuss some of the contracts involved in that case, and show that, in substance and in effect, there is no real difference between the arrangements and the contracts before your Honor in this case, and those which your Honor has already ruled as being in violation of section 1 of the Sherman Act and section 3 of the Clayton Act.

Now, as to one type of outlet in this case, namely, the L-O type of outlet, the contention of the defendant seems to be, as expressed in their amended answer in paragraph 18, that each of these outlets in the L-O classification, so-called, was acquired as an outlet by the defendant for the sale of its petroleum products and, as they say and contend, the relationship between the defendant and the oper-

ator of this type of outlet is analogous to that of agency or employment and that the occupancy of the station leased is upon the understanding that the defendant has a right, a legal right, to designate as a condition of the operator's occupancy that the lessee or operator of this type of outlet [fol. 3128] shall handle exclusively the defendant's petroleum products and such automotive accessories as the defendant may approve, and sell for distribution to any one of the three types of outlets mentioned.

We will discuss this question in its application to the facts and the law applicable thereto in a consideration of the legal part of the argument.

As to the other two types of outlets it appears to be the contention of the defendant that those contracts are not illegal, that they do not impose any restraints on the operator of those outlets which are in violation of either the Sherman or the Clayton Acts.

Now, before we discuss the written contracts that are before your Honor in the record in this case, I would like, briefly, as a background, to compare the market involved with that involved in the Standard case, which, as your Honor recalls, was sixty-eight millions of dollars as against $45,000,000 in the instant case.

The government contends, of course, that, as a matter of law, under the decisions of the Supreme Court, which we will not go into, on the appreciable segment doctrine, and your Honor's decision, that commerce in excess of forty-five millions of dollars in any year is certainly an appreciable segment of commerce, and that, therefore, those decisions apply.

[fol. 3129] In the Standard case there were in excess of 8,000 written agreements and some 742 oral arrangements, so that approximately there were close to 9,000 written and oral agreements involved in that case, as against approximately 7500 involved in this case.

Now, in the Standard case, the provision which ran through all of the written contracts and leases and which was common to all of the written arrangements, was that the dealers involved undertook to purchase all their requirements of one or more products which they sold at the outlets involved in the Standard case.

It is the contention of the government that that is pre-

cisely the same undertaking which runs through all of the written and oral arrangements and understandings which are involved in this case, so that the effect of the contracts in the instant case is the same, in substance, as that in the Standard case, as I have previously indicated, namely, that you have an appreciable market, a segment of interstate commerce, in the dollar volume in excess of forty-five millions of dollars that is completely closed or shut off to all competition, and that that has been effected by these written contracts and oral understandings and arrangements, and that the defendant has, therefore, violated by these regulations and restraints imposed upon the dealers the Sherman and Clayton Acts.

[fol. 3130] Now, let us see what type of written arrangements the defendant has entered into in this case. As we have already indicated, one of the types of arrangement is a sublease. That runs through the L-O type of arrangement and the 3-C type of arrangement as well. The other type of document is the sales contract. That type of contract is in writing only in the 3-C and in the 337 type of arrangement.

[fol. 3131] But a comparison of the provisions of the L-O lease with those of the sublease in the 337 type of arrangement which I will discuss in a moment will show that the 337 type of arrangement has substantially all of the provisions, with a few modifications, which are contained in the lease in the L-O type of outlet.

Now, let us look at this L-O type of lease, Form 542, Government's Exhibit 1. That was first adopted in 1937, as the record shows, and it was really on a cancellation basis of six months. The tenure, in other words, was continuous, with a termination notice of 30 days which could be given prior to the end of any six months period if you wanted to cancel. That arrangement or provision is contained in paragraph 1 of Exhibit 1.

Then paragraph 10 we find an indemnification clause, for example, whereby the lessee agrees to indemnify the defendant against all loss, etc., and the various other types of provisions usually found in a lease are contained in this exhibit.

Exhibit 1-A, which was adopted in 1939, paragraph 15 was added. That is the only change and that paragraph is

one which states that there was no representation made or any inducements made to the lessee to enter into the arrangement.

Exhibit 1-B, which was adopted in February 1941, has a clause, No. 12, which is added and not found in the previous ones, which deals with what the operator shall [fol. 3132] do, that is, the number of hours that he shall keep open his station, etc.

Exhibit 1-D was adopted in June of 1943, contains for the first time the 24-hour cancellation clause, and that is found in all 542 leases after that date.

Exhibit 1-E, which was the Form 542 adopted in February of 1944, does not contain paragraph 12 previously found in Exhibit 1-B, which has to do with the control exercised or which the defendant wanted to exercise over the operator of the leased out unit insofar as the number of hours, etc., that the station must be kept open is concerned. In other words, in 1-E which was adopted in February of 1944 that control provision was taken out of the lease and, as your Honor knows from the evidence, that type of control was thereafter exercised entirely through an oral arrangement.

There was no substantial change in the 542 after that date, and Exhibits 1-F and 1-G, which were enacted or put in use in 1948 and 1949, respectively, were merely inserted in the record to show the continuing character of the lease form which I have just described.

Exhibit 2 was the type of lease which the defendant entered into with—oh, you might call it a truck station, the operator of which consumed or purchased a substantial amount of petroleum products and automotive accessories from the defendant. That lease contains substantially the [fol. 3133] same provisions as in 542, except that the defendant could cancel that on a five-day basis, and the rental was also fixed on that type of lease. For example, in Exhibit 2, that exhibit shows that the rental was $988 per month and that the term of the lease was for a period of five years, subject to this five-day cancellation provision I have mentioned.

In these two types of arrangements, as I have stated, an examination of the lease shows absolutely no provision dealing with the purchase or sale of any petroleum prod-

ucts from the defendant or any automotive accessories from the defendant, and the evidence in this case, I believe, clearly shows that was a matter entirely of oral understanding and arrangement between the defendant and the operator at the time these arrangements were made.

I want to briefly refer to the 2-B type of deal. It is not in effect now for the most part, but it does show the background and intention of the defendant with reference to controlling this type of outlet.

That, as your Honor knows, is a lease, sublease, and sales contract arrangement, and is shown by Government's Exhibit 3 through 3-A to -D, inclusive.

Exhibit 3 is the lease from the operator to Richfield. It is interesting to note that paragraph 2(b) of that lease gives the lessor, or the defendant, the right to make any changes he wants to in the station or the property leased [fol. 3134] so that it can be used for the purposes of selling petroleum products.

Paragraph 2(d) of Exhibit 3 also contained a provision that the lessor was not to engage in competition on any property which he might have within 200 yards of the premises leased, that is, not to sell any products competitive to those of the defendant within that area.

Paragraph 2(e) is interesting because it deals with the painting of the premises and it gives the defendant the right to paint this building that is leased to him if he want to do so, and also gives the right to remove any improvements that he may make on the property at the end of the lease.

Paragraph 7 then provides that the lessor may terminate the lease if the lessee does not pay any rent. And 11 gives them the right to terminate on three days notice.

The sublease which the defendant gives back to the operator under this type of arrangement is Government's Exhibit 3-A, and here, again, we find, as I suggested a moment ago, the same provisions as are contained in the 542 lease. For example, paragraph 3 of 3-A, the sublease, is the same as in Exhibit 1, namely, that the lessee shall make no changes in the premises without the approval of the defendant in writing. In other words, that provision prevents the lessee or the operator from making any change

of any kind in his property that he has leased to Richfield [fol. 3135] and then leased back, without he first secures the approval of the lessor or the defendant in writing.

Paragraphs 4, 5, 6, 8, 9, 10, 11 are exactly the same as they are in Exhibit 1, the sublease to the L-O type of operator. And paragraph 7 is interesting because it gives the lessor, that is, the defendant, the same right to take over the station as is given the defendant in its L-O type of arrangement, paragraph 7.

And then, of course, there is the sales contract provision, 3-B which I will discuss when I deal with the provisions of those contracts under the 3-C arrangement.

Now, the arrangement which is in effect today is better exemplified by Government's Exhibits 4. That is a lease from the operator to the defendant. Paragraph 3 of that lease requires the operator to make all repairs to the station leased on 10 days notice to the operator, which, of course, enables the defendant to completely control that station under this provision by requiring any changes that are in the nature of repairs, etc., to be made at the expense of the operator. Paragraph 4 provides, again, the painting arrangement, that the defendant may put tanks, etc., on the property leased and may paint the station. In other words, he is given the right under the lease to do that if he wants to.

Paragraph 5 gives the defendant the right to remove any improvements, etc., at the end of the lease.

[fol. 3136] Paragraph 8 says that the lessor shall not engage in competition with the defendant within 200 yards of the premises. That provision is like 2(d) in Exhibit 3 that I have mentioned.

Paragraph 11 says the defendant may offset the rents and amounts due from the lessor on any rents due, etc., from him under the arrangement.

Exhibit 4-A is the sublease back to the operator, and here, again, we find this paragraph 3 in the sublease is the same as paragraph 3 in Exhibit 1, the sublease to the operator in the L-O type of arrangement, namely, that the operator or lessee shall make no change in the premises at all without the written approval of the defendant.

Paragraph 4 is the same as in Exhibit 1. Paragraphs 5, 6, 7, 8, 9, 10, 11, and 13 are the same as in the sublease

under the L-O arrangement, but contain a provision that if the sales contract is cancelled—and this, of course, is the arrangement where you have a written sales contract—the lessor or the defendant, that is, this defendant may cancel this sublease on five days notice to the lessee.

In other words, that is important, your Honor, as we will point out in a moment, because of the exclusive requirement provisions that are contained in that written sales contract. In other words, if they are not complied with under the provisions that I have just mentioned of the lease from [fol. 3137] the defendant, the sublease from the defendant to the operator, the defendant may cancel that sales contract, and then the defendant may cancel this sublease on five days notice to the operator and he would still have in effect the underlying lease from the operator as long as he continued to pay the rental provided for in that lease to the operator.

Exhibit 4-B is the sales contract. The first paragraph thereof contains the exclusive dealing provision, with a minimum amount that the lessee or the operator is required to purchase. Paragraph 8, also, of this sales agreement, 4-B, provides that the defendant-seller can paint the station that is leased in the sublease and the lease that I have just mentioned and charge the dealer the costs of any painting done to the station prior to two years of the termination of that contract.

Now, that provision was not contained in the 2-B type of sales contract that I have mentioned which was not used substantially after the type of sales contract listed in Government's Exhibit 4 was brought into use in 1945.

Exhibit 4-D sublease contains a change which we believe is significant. Paragraph 3 of that exhibit—and this is that sublease to the operator—is changed. The provision is taken out that the lessee shall not make any changes in the property without the written approval of the defendant.

In other words, in 1948, after your Honor's decision [fol. 3138] in the Standard case, as your Honor recalls, there were some changes made by the defendant in some of these forms of contract, and that was one of them. In other words, up to that time they had a provision in the sub-

lease under the 3-C arrangement which enabled them to prevent the dealer or operator from making any changes in his premises at all, which, of course, would include putting in additional tanks or anything else of that type, without getting the written approval of the defendant.

Otherwise, Exhibit 4-D sublease is the same in form as that of those previously used.

Now, Exhibit 5 deals with the 337 type of arrangement, which your Honor will recall was a sales agreement and painting type of arrangement.

[fol. 3139] I might add, before I get into this type of arrangement, that the record shows that the leases and subleases and sales contracts, which are invoked and involved in the 3C type of arrangement were for an extended period of years. One of them in the record was for a period of 20 years; some of them for 10 years; some of them for 15; some of them for five. But the point is, your Honor, that they were long term arrangements and effectively operated for a long period of time, and that is important, I submit, as an indication under the law of the intention to control and monopolize that particular outlet.

Now, coming to the 337 type of arrangement, as I have indicated, the first one of those, Government's Exhibit 5, adopted in 1937, contained a maximum and a minimum requirement of purchases of petroleum products, and was generally for a term of one year. But here again paragraph 5 of Exhibit 5 gave the defendant the right to cancel that arrangement at any time on five days' notice without any reason,—I mean it was just a termination right with no comparable right given to the other party to that sales contract.

Government's Exhibit 5-A is the paint contract of the same date, or which was invoked at the same time, in August of 1937, and 5-B is the sales contract form that was adopted in June of 1938, and then 5-C is a painting agreement adopted in 1939, and that contains this provision, [fol. 3140] in paragraph 1, about no signs being put up on the premises without the approval, and so on, of the defendant, and the provision that the defendant may terminate the painting agreement and collect for the paint if the sales contract is canceled by the defendant at any

time, on any termination by the defendant. In other words, that is paragraph 3 of Government's Exhibit 5-C. The defendant could go in and cancel the sales contract if the operator did not buy his entire requirements, or I mean the amount specified in the contract, and cancel out that contract, and then collect on the paint contract under the provisions of the two agreements I have mentioned. And then in Government's Exhibit 5-D, which is the sales contract, adopted in 1948 after your Honor's decision, paragraph 1 is changed in that sales contract, and that paragraph gives the defendant the right to withhold delivery of gasoline, depending upon certain circumstances that are set forth in paragraph 1 of Exhibit 5-D.

Now, Government's Exhibit 5-E is the painting agreement which was adopted at the same time the sales contract, Exhibit 5-D, was put into effect, after your Honor's decision in the Standard case.

This paragraph 1 that I have mentioned in 5-D has been changed. The provision on the signs and the right to control the signs that may be put up on the premises, which had been in the painting contract up to that time, is [fol. 3141] removed, and paragraph 3 inserted and changed, and that provides that the defendant can only collect on the painting agreement if the agreement is terminated for a breach of the sales contract.

In other words, the point I wish to suggest to your Honor is that up to that time, as this change clearly shows, the defendant was always in a position to put the heat on the operator, and the penalty was always ready to be invoked, in a cancellation of the sales contract, which would automatically impose upon the operator the obligation to pay for the painting of the station, and the right or the permission to do so was given by these provisions that I have just described in the two types of arrangements.

Now, those exhibits, briefly, contain the written provisions in these contracts, which the government submits clearly shows the intention on the part of this defendant to completely control and monopolize the market of the operators who are subjected to and with whom they had these types of arrangements.

Now, I want to, while I am still dealing with the writ-

ten arrangements, turn now to the written form of contracts which the defendant used with its distributors and commission agents, because I believe that is important insofar as it relates to the defense of the defendant, which it is urging is applicable to the L-O type of outlet, namely, that the operator or lessee of that type of outlet is not an [fol. 3142] independent businessman. The contention of the government, of course, is, as I have suggested, that all of these operators, whether they are lessees under the L-O type of arrangement or whether they are lessors and lessees and parties to sales contracts under the 3-C deal, or just parties to the painting agreement and the sales contract under the 337 agreement, are independent businessmen, and that is the market here which has been foreclosed from all competition by this type of an arrangement.

Now, with that in mind, let us take a look at some of these agreements, that are shown by Government's Exhibits 6 through 6-A to -D, inclusive. Now, Exhibit 6-, which was first used in 1937, was the distributor's agreement, and paragraph 1 provides that the gasoline shall be consigned to the distributor, and under paragraph 2 that he is made a trustee for the defendant. Paragraph 4 requires him—and this is the only time that your Honor will find this provision in these arrangements, although the evidence shows that an oral arrangement was made subsequent to that—requires the distributor to purchase all of his TBA requirements from this defendant or from the persons designated. In other words, this provision No. 4 of Exhibit 6 on TBA was first applied in writing, and the only time it is applied is back in 1937, and it required him then to make all of his purchases, and your Honor will recall that these [fol. 3143] distributors or bulk plant operators subsequently became the TBA distributors for the defendant. Now, paragraph 21 of Exhibit 6 is interesting, because it requires the distributor to accept and pay all unemployment taxes, and any taxes for Social Security, or of that type, that might be imposed on him under the law.

Of course, we appreciate that at the time this agreement was made that Social Security, and that type of thing, had just begun to come into effect, so that the ultimate obligation of who was to pay that and under what cir-

cumstances those taxes were to be paid had not at that time been determined.

Now, Exhibit 6-A is the commission agent's agreement that was first used in October, of 1937. Here again paragraph I says that the title to all of the petroleum products which he handles shall remain in the defendant. Paragraph 10 says that he shall deduct, that is, he shall report to the defendant for any unemployment obligations under the Unemployment Tax laws, Social Security law, and so forth.

We now come to Government's 6-D, the commission agent's agreement, which the government submits is important. Paragraph 3 thereof specifically makes this commission agent an independent businessman, and even though the agent is still handling the defendant's products on a consignment basis, with title remaining in the defendant, paragraph 3 makes him, under the written provisions of [fol. 3144] that agreement, an independent businessman. And under paragraph 7 he accepts the exclusive liability for all age pension laws, unemployment taxes, Social Security, Industrial Compensation, and so forth.

In other words, if your Honor please, I believe that is of import because in this case that will be the defendant's defense, at least on the L-O type of outlet. We have here a situation where the defendant retains control and title of the property which the agent handles, and yet in spite of that the defendant charges him and makes him an independant businessman.

The Court: You are talking about the distributor?

Mr. Dixon: I am talking about the commission agent.

The Court: The commission agent?

Mr. Dixon: That is right.

The Court: Not the L-O operator.

Mr. Dixon: Not the L-O operator.

The Court: You are talking about the intermediary between the company and the L-O operator.

Mr. Dixon: That is right, your Honor. In other words, it is the commission agent who makes the delivery of the petroleum products to the dealers, and in many instances handles the TBA sales, and so forth, and distributes those products to the dealers. But I comment on it in passing

because we do believe it is of some significance as related [fol. 3145] to the defense raised here by the defendant, that the L-O operator is not an independent businessman. The government, of course, contends that he is.

The commission tank salesman, Exhibit 6-E, is a little different. Title to the products which he handles is still retained by the defendant until sold, and this exhibit provides that the defendant may pay and deduct unemployment taxes for this type of an agent.

So, insofar as the written forms of the agreements are concerned, we submit that they clearly show an intention on the part of this defendant to completely tie up the markets, or the purchaser of the products under the sales agreement with the defendant, so that he is not able, at least not until after your Honor's decision, when the changes were made in the sales contract and the painting contract that I have referred to, to acquire any petroleum products from any other source than the defendant.

Now, with that background let us briefly see, coming back to the Standard case, what the situation was in that case,, with reference to the written contracts. Your Honor will recall that in the Standard case there were 1800 subleases, that is, they were leases in which Standard turned over the property to the dealer under a written form of lease. That lease was generally combined with another type of written arrangement known as the dealer and the [fol. 3146] dealer TBA type of arrangement, depending upon whether it was to be 100 per cent all the way down the line for everything sold in that outlet, or whether it was to be merely 100 per cent as to petroleum products.

Now, the sublease, however,—there, if the court please, may I correct the record. That was a sublease from Standard to the operator that I am talking about. There were 1800 of these subleases. That type of sublease was generally for a specified term, had a specified rental, and provided that the lessee should only handle Standard Oil petroleum products. As I have suggested, it was combined necessarily with the TBA dealer type of arrangement, to extend that obligation to automotive accessories, as well as to petroleum products.

Now, there were other types of arrangements, however,

in the Standard case, which I believe are somewhat comparable to those in the instant case, but before I go into that I should perhaps mention that the record in the Standard case shows that there were over 1,000 company-operated outlets, which were not involved in that case.

In other words, Standard had through Standard Stations itself directly operated and sold its petroleum products and other products to the retail purchasers thereof through over 1,000 such outlets in the territory involved. There are no such stations involved in the instant case because the [fol. 3147] testimony is clear that Richfield does not operate itself a single retail outlet. In other words, there are no Richfield-operated outlets, as such, in this case, as there were 1,000 of such outlets, or more, in the Standard case.

The Court: That is in the sense that they are operated through employees of Richfield. The defendant contends that to all intents and purposes L-O stations are company-operated stations here.

Mr. Dixon: Yes, I understand the contention of the defendant, your Honor. But I am pointing out the distinction between the Standard and the instant case in that respect.

The Court: That is right.

Mr. Dixon: Now, it may be——

The Court: The stations had different names and the stations in the Standard case that we were concerned with were the Chevron stations.

Mr. Dixon: That is right, your Honor.

The Court: And the color was different, the name was different, and the insignia were different. They had an Army chevron of an old time sergeant, and it appealed to me, because that was as high as I ever got in the Army. But the Standard Stations were the regular red, white and blue stations, which were operated through employees of the company. Of course, not that Standard conceded any dif- [fol. 3148] ferent rule, or they would not have fought the case to the Supreme Court. They, too, contended that the relationship was such as to permit them to control the outlet, and that is the chief problem to which the evidence in the case was directed in that case.

Mr. Dixon: Now, I said, of course, the legal distinction

which the defendant endeavors to make, as I understand, is that the L-O type of station is the same, in effect, as the Standard Stations type of station in the Standard case, which was not subject to any of the provisions of the decree which your Honor entered, and which was not involved.

The Court: We have to decide, of course, what it is, and the comparison between these stations and the Standard Stations is helpful, because in that case there was established law which has the approval of the higher court, and the portion of it which was not passed on by the Supreme Court has my approval, because I still stand behind the opinion I wrote in that case. Ultimately we have to decide the problem on the basis of the characterizations of these various outlets, as they are made out by the record, and, as I said before, when I hinted, and you accepted the hint, that perhaps in view of the admissions of the defendant there was no need for too much repetition of testimony in regard to the character of the L-O stations, that, in the last analysis, the defendant admits the absolute control [fol. 3149] of the outlet. In other words, their plea as to that is what I might call—let me see. You come from Missouri?

Mr. Dixon: From Ohio.

The Court: Or from an old common law state? No, Ohio is not a common law state, and I didn't know which of those middle western states it was. But you remember studying your pleadings of confession or avoidance. In other words, they say, "We admit control. We tell them what to do. We can fire them in a minute, on any excuse of one kind or another. We may fire him because he doesn't keep his station clean, or because he has one can of Quaker State there, instead of having Richfield. But we insist that he is not an independent businessman. We haven't given him a name yet, but he is, to all intents and purposes, running the station as our agent. He has no interest in the good will that he builds up. We can destroy it in 24 hours, and we can destroy his property values by saying to him to take his junk out of the station, except such as we tell the man we choose to take. We will not recognize any man he recommends, even though the man would give him $5,000 or $6,000."

Now, what I am doing in a hurry-up fashion is taking some of the highlights that stand uncontradicted here as to what was done with these stations. So they say, "We admit we can do that, and the result is he is just like a serf [fol. 3150] under the old limited tenures under feudal law, he has it by our sufferance, and we can put him out in 24 hours. We can tell him to get out of here, and we will have another man in in 24 hours, or we can tell him he can stay a day or two. Or we can say, 'You can find a place to hide those things in your garage or under your wife's bed.'"

Now, that is an extreme statement, but all of those matters are substantiated by facts in the record, facts which have not been successfully contradicted, so that the problem before the court as to those stations is very simple: Is that relationship a relationship that has the characteristics of agency, or does it have more of the other?

Now, as I say, we must get away from the tyranny of labels. We must remember the admonition of Mr. Justice Douglas that you cannot judge by what technical terms lawyers put in contracts, but by what relationship exists, and it may well be that in this case we may have to do what we do in administrative procedures. For instance, under the O.P.A. regulations we were confronted with relations or with structures. For instance, in one case you may be confronted with an apartment-hotel, which is a departure from the old-fashioned apartment house and a hotel. It has the characteristics of both. Then we adopt a test which we call the dominant test, and by that test we see if it has more of the characteristics of one than of the other. It may be [fol. 3151] necessary in this particular case to do that, in determining it, and, of course, if you apply it, it works both ways. It depends on which you consider to be the dominant and which you consider the subservient.

For instance, counsel brush aside the fact that the man is responsible for Social Security, that he pays his own wages, that all his losses are his own except such as if a lady slips on a banana peel, and lands in the Federal Court, as was said on one occasion, and sues them for maintaining the premises, they are responsible. But they say that as to his employees he has to pay them and has to carry them under

the Social Security law, that they do not carry them under the Social Security number or the State Employers' Liability law, that that does not apply to them. They brush that aside and say that those things do not matter, because ultimately he is not an independent businessman because he has no good will. So it becomes a question of law utimately: Which is the more important in the relationship?

[fol. 3152] Is it the name that just describes what they use, "an independent businessman" that ought to determine, or the question of rights and obligations which have accrued? Is it the fact that he has no good will? Is that to dominate? Is it the fact that this man has so many obligations that when you put him out you can break him, you can break him as happened to DeLonge? You can actually break the man and deprive him of any good will. Which of these incidents determine the relationship?

So it seems to me that so far as the L-O question is concerned, it is merely a question of law for me to determine as to what that relationship is.

Does it have the indicia of independence so that the man is an independent operator despite the fact that his relationship is terminable at will, bearing this in mind, that even tenancies at will, so long as we are going into tenures, land tenures. We bear this in mind, and that is why I brought out that old decision of mine in the Owl case, written 14 years ago, that even tenancies at will, you see, are tenancies nonetheless.

So that in analyzing them we get away from the old categories in that Owl case, the Schlesinger matter, none of the four categories which characterize tenancies were present. And if I had been case-bound by feudal law and the law of tenancy of England, I could not have found that way. But [fol. 3153] I struck out a new path. I said: Listen, we are living in a new world and that is of a different character. That is why they teach that in law schools. They teach that case in law schools. It is in at least four books relating to relationship, because I cancelled the constant characteristic of American judges and English judges under our pragmatic system to take old phrases of law and adapt them to new conditions. And where I found, as I did there, that a relationship existed of landlord and tenant, I did not bother that it did not conform to Blackstone's defini-

tion of "landlord and tenant." It is a landlord and tenant of 20th century stock.

And that is the problem here. I have to determine by the incidences—that is a good word—of the relationship what this relationship is. And in doing so I won't be bound by a phraseology, whether used by Mr. Justice Frankfurter, whether used by the attorneys for the defense, or whether used by you.

I will have to determine whether the relationship is the same as that of an ordinary agency which makes them maybe the operators of the agent, or whether it is of different characteristic.

So I will have to weigh the things that he is bound to do by what they can do to him, and determine which of these characteristics are more dominant, and out of that determi-[fol. 3154] nation will come a determination whether they operate these stations and they have a right to tell them what to put in or what not to put in, or whether he operates the station under rather onerous burdens that they impose upon him and without the acceptance of which he cannot deal with them.

So that, to my mind, is the problem insofar as the L-O stations are concerned. It is a legal problem.

Mr. Dixon: Your Honor has made a division, I think, in the course of your remarks in passing on the situation here. And I may say in a few words that it is the contention of the Government—and this is argument in substance—that the dominant characteristics, borrowing a word that your Honor has used, that runs through all three types of arrangement is that of a buyer and seller of products, and that that——

The Court: I am not talking about the other two groups. I am trying to place myself for the present upon the premise adopted by the defendant that there are distinctive phases of this L-O relationship which do not appear as to the others. My idea is merely to use Mr. Justice Cardozo's famous words, "to canalize the discussion," you see, if I possibly can. We will get to the others later on.

Mr. Dixon: I think that has been very helpful, your Honor. And if I may go back to the Standard Oil case again—and I go back to it because I believe the only difference in fact between the two cases and the evidence in

[fol. 3155] the two cases is that in the Standard case they had put the arrangement in writing that the defendant is here obliged to apply to the L-O type of stations. That is the only difference, in our judgment.

In other words, in the Standard case, for example, they owned the fees on many of the outlets that were leased to the dealers there, the same as the defendant owns the fee of some of the L-O stations that they have subleased under 542 to the L-O operator.

Standard, for example, owned 110 of the pieces of property that it had leased, and of those 110 had given subleases to 23 dealers and no lease at all, merely an occupation of the premises at will, of 87 of those type of outlets.

In other words, if the defendant here claims that this operator was a tenant at will, well, in the Standard case we had that type of arrangement. That was one of the many types of arrangement in the Standard case, and it apparently just so happens that the defendant in this case has adopted one of the arrangements that was in use in the Standard case and has endeavored to distinguish it legally because of the position and the argument which they have raised concerning the L-O type of operators.

I just want to point out, first, that in the Standard case that type of outlet, identically the same except Standard [fol. 3156] owned the property, owned the fee and they had some of these operators in there without any lease at all, they were just there, perhaps, as a mere licensee, you might say, not at will—they had 87 which had entered into this type of arrangement of exclusive dealing in Standard Oil products, and Standard had leased 4,944 stations.

In other words, of the approximately 6,000 outlets that were involved in that case, pretty close to 5,000 of them Standard had actually subleased or leased. Of that number they subleased 1,775, your Honor will recall. In other words, they actually entered into a form of sublease of the type exemplified by the Government's Exhibit 5 in the Standard case. They had 1,775 of those subleases, and in that particular type of transaction the sublease required in writing that the lessee buy all of his petroleum products from Standard, and that he could not handle anything else on the premises.

In the instant case, insofar as the L-O station is con-

cerned there is nothing in the written lease but it is all done orally. They tell the dealer, regardless of the lease. I mean there is nothing in there about buying or selling anything from this defendant, as your Honor knows. It is all done orally. But in the Standard case there were 2,169 outlets that Standard had under lease with entire requirements contracts of some type, written or oral.

In other words, pretty nearly 5,000 stations that were [fol. 3157] of that category in the Standard case are comparable to the L-O and the 3-C type of arrangement here, and certainly insofar as the effect is concerned it is the same in both cases.

The Standard had an exclusive dealing contract only with 1,143 dealers. That is like the 337 type of arrangement. The dealer was subject to that kind of arrangement, had to buy all of his products from Standard. He did not have a lease from Standard and Standard did not have anything to say about the property at all. As your Honor will recall in the Standard case, they got an operator, went in under that kind of arrangement and painted the station, as did the defendant in many instances in this case, represented by a written paint contract. But they did the same thing as the defendant did in this case and the purpose of the arrangement was the same as the defendant had in mind in the instant case and it worked the same in both cases.

So that if we compare the arrangement—and there were many more arrangements of a different type involved in the Standard case than are involved here. They only had three here in this case. They had three types of arrangement. In the Standard case we had as many as six or seven and we had some, as your Honor knows, that were entirely oral, the uncontracted outlets, which are not involved in this case.

If we examine the written contracts that were used in the Standard case, we find the same provisions running all [fol. 3158] through them, either in written form in the written sales contract in this case, or as are expressed through the oral arrangement applicable to the L-O operator.

For example, the dealer agreement Exhibit 1, the dealer had to buy all of his requirements at the outlet that he

was operating, and the company, if it furnished any equipment, could remove under paragraph 5 anything that it put on the premises at any time.

Well, that certainly is what is running through many of the provisions of the subleases that I have described and analyzed in going into the various types of written arrangement before the court in this case. The petroleum products and equipment agreement in the Standard case, that is Exhibit 3, the dealer bought all of his requirements of petroleum and accessory products at the outlet which he was operating. The Standard, under paragraph 4, agreed to install some equipment, and under paragraph 5 the dealer pays for the use of the equipment, comparable in some respects to a lease or a loan of equipment. And Standard, under paragraph "C" could remove that equipment at any time. That was the provision comparable to those that are in use either orally in the L-O type of arrangement here through the pressure they could bring to bear on the operator, or in the written provisions of the leases and sales contracts that we have analyzed.

The dealer TBA arrangement, Government Exhibit 4 in [fol. 3159] the Standard case, covered, as I suggested in paragraphs 1 and 2, both petroleum and TBA products in writing.

Standard could remove any equipment, etc., that they loaned or put on the premises at any time the agreement was cancelled.

And so, as we compare these written agreements in the Standard case with both the written and the evidence on the oral arrangements in the instant case, I submit to your Honor that there is no substantial difference between the arrangements and contracts that were involved in the Standard case and those involved in the instant case, and that is regardless of the argument of the L-O type of outlet being in a different category.

The Court: Go ahead.

Mr. Dixon: Certainly, your Honor.

The Court: I thought it was a good stopping point to take a recess.

Mr. Dixon: Whatever you say, your Honor. I think it is.

The Court: Yes, let us take a short recess.

(Short recess.)

Mr. Dixon: We come now to a discussion of the oral testimony which was offered by the Government in support of the charges made in the complaint. The Government presented some 67 witnesses to the court, of which 15 of them were either associated with the defendant or had previously, with testifying, been associated in some capacity with the defendant.

[fol. 3160] The Government also offered the testimony of some 28 dealers, of which a substantial number of them were in the L-O category and the balance were in the 337 and the 3-C types of arrangement.

The Government also offered the testimony of some 24 suppliers who testified concerning the attempts made to sell their products, both petroleum products and automotive accessories, to the various types of outlets involved in this case.

I submit that the evidence given by the witnesses clearly shows the restraint in operations, the source of the restraint, and the effects of the restraint complained of on the interstate commerce described in the complaint.

Let us rather briefly, if we may, refer to some of the testimony of some of these witnesses. I am sure your Honor is familiar with all of it but I am going to try to briefly highlight what we regard as some of the perhaps more important parts of the testimony given by some of these witnesses. There was, you will recall, the testimony of Mr. Bradford, the former employee and district supervisor of the defendant. He testified generally concerning the operations of the defendant, and I think one of the significant things that he testified to is recorded on page 830 of the record, where he was asked the question:

> "Were you under any instructions to accept [fol. 3161] 3-C deals except on 100 per cent basis, that is, that they deal only in Richfield products 100 per cent?"
>
> His answer was:
>
> "They had to be 100 per cent, as far as I knew."

I think that does describe generally the effect of the testimony, the substance of it with reference to those sta-

tions as exemplified by the witnesses which we will comment on and the written provisions of the contracts that we have previously analyzed as applicable to that type of outlet.

This witness also testified that he told many dealers to move competitive signs, and that among the practices of the company they permitted non-complying L-O dealers to remain in the outlet only until they could find somebody else to take over the outlet.

In other words, I believe that is of import, your Honor, because we start in the L.O station with a clear lease. The Government submits there cannot be any question but what that is a lease that has the legal effect in every respect of turning over this property to the dealer and the operator. And accompanying that, as we have contended, of course, is this oral arrangement dealing with the sale of the products, the contract and understanding to purchase all the requirements of the dealer at that particular outlet. The term of the lease on the face of it clearly contemplates, we submit, [fol. 3162] a yearly arrangement, because it provides how much the rental shall be there on a monthly basis over a period of years, starting with a minimum monthly rental and then thereafter a one-cent gallonage basis. Some of these leases, as your Honor knows, contained only a stipulated rental. For example, a flat rental without this one-cent overage was contained in the Edgar & Bauer leases. So that we have a variety of situations even on the rental provisions in this L-O type of arrangement. But when the defendant had decided that there was a breach of this arrangement with the operator and he was not complying with the requirement that they buy all of the petroleum products and oils and all of the automotive accessories that were sold from that outlet from the defendant, then there was put in motion to get rid of that operator and, as your Honor knows, the operator was not advised at the time of that decision.

The testimony in this case shows, from the defendant, that once they had decided that the operator was to go, he was not advised of it until they had found somebody else, and then the sword of Damocles being over his head, the cord was cut and it dropped and the 24-hour notice was

served. This witness Bradford testified concerning that, and he testified to the practice of the company, and he, in fact, served or caused to be served one of the notices on one of the dealers, Mr. Edgar.

[fol. 3163] He further testified as part of the practice they would always try to get a mutual cancellation first from the dealer, and it is in the record here with reference to some of the dealers that they did sign that mutual cancellation form which is contained in and is a part of the record as the Exhibit No. 11.

But failing in that—and the evidence shows that some dealers did not want to sign that cancellation—then came the 24-hour notice, Exhibit 13, in which of course the dealer was put out in the manner and the method with which your Honor is thoroughly familiar.

This witness also testified that if a 337 dealer broke his contract, the sales contract, that the defendant would move in and collect under the painting arrangement. So that as far as the 337 dealer was concerned, unless he complied in every respect with the provisions of the sales contract, the penalty he suffered was to pay for the painting which was done to a station which, of course, obviously would have a persuasive effect on any dealer.

There are other witnesses of the defendant, Mr. Shewbridge, a merchandiser, who gave testimony. He was, your Honor recalls, from Seattle, and he testified that he was told to tell the dealer to get rid of competitive oils or to be checked out.

In other words, under the unwritten arrangement appli-

[fol. 3164] cable to the L-O dealer if the dealer did not comply with the contract or arrangement to buy all of the products exclusively from the defendant, as your Honor already indicated, he would be checked out. But the first move—and this witness Shewbridge testified to it also—was to try to get the termination mutual cancellation arrangement first, and then failing in that, to move in with the 24-hour cancellation clause.

Mr. Weston, a former merchandiser or merchandiser from Seattle, who broke in some of the dealers in the L-O stations, testified that as part of the arrangement he would impress on him that the dealer was an independent business-

man. It is true that the evidence shows that it was subject to these qualifications of compliance, but I think there cannot be any real question as to that. And when it comes to argue the various facts and the legal effect of those facts, I think we can support that and will support that conclusion that these dealers were independent businessmen. But here this witness testified that in breaking them in at the L-O stations he would impress on them that they were.

And then, of course, he gave the usual testimony to the effect that no off-brand merchandise was to be handled at the L-O outlet and that he had told some dealers to get it out, as they knew what the consequences would be.

And there is Mr. Pitts, formerly with the defendant. [fol. 3165] He was a TBA distributor, and both he and Mr. Gates, formerly with the defendant, testified that many of the dealers wanted to handle competitive products, that is, products competitive to those that were sponsored by Richfield.

[fol. 3166] In other words, the desire of the independent dealer, whether he was an L-O dealer or whatever you want to call him under the 337 or 3-C arrangement, in his selling and carrying out the program of Richfield, he found that desire there, and the market there, if the court please, which was closed off by these arrangements.

Then there was Mr. Duarte, a former commission bulk plant operator, and he testified concerning the 337 painting agreement, and to the effect, in the record at page 319, that that agreement meant that nothing but the defendant's products were to be handled at the 337 outlet.

Then we had Mr. Scollard, the salesman for the defendant, and your Honor knows that the salesman handled only or dealt only with the 337 and the 3-C outlets. This witness, at page 976 of the record, testified that the defendant was quite strict to see that just approved merchandise was handled at the outlets.

So that was the general proposition and intention of the arrangements made, whether they were written or oral, with reference to the three types of outlets, from the brief summary of some of the witnesses who have been and

were associated with the defendant in carrying out this program.

Now, coming to some of the dealer testimony we find, first, that all of these dealers had investments, as they called it, varying anywhere from $1500 to Mr. Pearse, who [fol. 3167] said he had stock in addition to that of $4,500 to $5,000,—but from $1500 up to that which Mr. Hurd testified to, in the amount of $8,000. So all of these operators had an investment and paid out money to buy products, which they, in turn, resold at the station outlet, or put into equipment which was used in the operation of the property leased to them, or which they had themselves under a 337 arrangement, or which they owned without any lease at all from the defendant under the 3-C arrangement, to enable them to carry on their business.

Now, this witness, Mr. Pearse, your Honor will recall, testified that his station was searched by the defendant at a time, and even though he had a demand for competitive products, that he was told to get rid of them, and he was told to remove the oil that he had on his premises or he would be canceled out, and to remove the signs, and that finally he was asked to sign a release, which he did. Then, when the inventory was sold to the operator which the defendant had secured, your Honor will recall he referred to that transaction as really an auction, and that the new operator said he didn't want anything in one of the rooms there, and to just take it all out, so that was all, of course, that Pearse could do.

Then Mr. Mills' testimony is rather interesting, because it deals with a dealer who had been operating an outlet for a number of years. This witness shows what happened [fol. 3168] when the decision was made by the defendant to change over the L-O type of outlet from a six months' basis to a 24-hour basis. And we direct your Honor's attention, particularly, in this connection to the Series 10 exhibits, which show the plea that was made by this witness and even many of the representatives of the defendant to their superiors to enable this particular operator to continue on some basis, as he had in the past, with a term lease. And, of course, the net result was that he had to comply, even though he had actually enabled the defendant in this case to get this outlet, which he had previously had,

as an L-O outlet, and even though he had an investment in that business and had built it up. But it shows the policy and it shows the intention, if the court please, and that is why we believe it is significant, of this defendant to monopolize and control every one of these outlets 100 per cent, and that, as we shall argue in the legal part of the argument, constitutes, in our opinion, the vice of this entire arrangement, and which makes it a violation of both the Sherman and the Clayton Acts.

Then there is the testimony of Mr. Moore. He was a 3-C dealer, from Medford, Oregon. His testimony shows that he was told that he should handle only approved products, that he had competitive signs on his property and was told to take them down. And he also testified that he could make more money selling competitive oils, but he gave up selling them because of the arrangement, and [fol. 3169] took down the competitive signs. The new sales contract was presented to him, your Honor will recall, in February, 1950, and he finally signed it, and had been operating under that arrangement by direct lease now from the defendant. But here we have a situation which gives in background the 3-C type of arrangement and operation, and the restrictive provision in the sales contract which the 3-C operator entered into, which required him, your Honor will recall, until after your decision in the Standard case to handle petroleum products on an exclusive basis. Of course, after that it was switched over, as your Honor knows, to a maximum, minimum arrangement, but the testimony of Mr. King in that respect is that from the time they started the no-split-pump policy back in 1938, after Government Exhibit 9 was circulated, I mean that policy was made known, that the effect of all of these sales contracts has been that, regardless of the maximum-minimum provision, they have been 100 per cent Richfield petroleum products. The government contends that here is an example, in the testimony of Mr. Moore, operating under the 3-C arrangement, and with the contract then changed over, with no effect at all, and he continued with the same arrangement of purchasing and requiring to purchase all of the petroleum products handled at that outlet.

Then Mr. Edgar was a good witness. He testified con-
[fol. 3170] cerning the termination procedure. He was the one, your Honor will recall, was checked out or terminated by Mr. Bradford. This witness again, like all the others, had an investment of around $2,500 in equipment and products. He testified that the customers wanted other oils and competitive products, and that he could make more money by handling tires other than those secured from the defendant, and that Mr. Bradford told him if the competitive oil was not removed, he would be canceled out, and that he was subsequently canceled out; that previously he had been loaded up with battery cables by the distributor, the TBA distributor of the defendant and, of course, when he was canceled out, the same story was heard all over again as applied to these other witnesses, that he had to take his with him, pack up his bag and baggage, and do as best he could with those products which the incoming dealer did not want to purchase from him at the station.

Then Mr. Hurst testified. He was from Portland. This witness was not told anything at the time he went into the station about the exclusive handling of the products. That was his testimony, your Honor will recall, and I believe these stories because the whole of this L-O arrangement is oral. There is obviously nothing in writing, so that, in the last analysis, it depends entirely upon what the incoming operator or dealer is told by whatever representative is checking him in at that time. He was not told about this exclusive dealing policy until about a month
[fol. 3171] later, and then the same testimony applies as applies to the others, that this witness could buy products cheaper elsewhere than he could from the defendant, and one of the examples was that he could buy the same spark plugs for 29 cents that he paid 36 cents for to the distributor for the defendant. He was also told, the testimony shows, when he was looking for a station—and I believe this may have some bearing on the arrangement—that this station was for sale. In other words, it was a buying and selling arrangement, which it obviously is. But from the point of view of the defendant, the station was for sale and a sale implies the transfer of some products and the buying

and selling of something, and an investment. That is precisely what Mr. Gates testified to, and I think he describes his investment in this particular station as being around $1500.

Then we have the witness Colmery. He is the one who operated under a 3-C type of arrangement, your Honor, and I think it is of import in that it shows the long term nature of that type of arrangement. This started out originally as a 20-year lease and contract arrangement. It was subsequently reduced as time went on in years, and Exhibits 17 and 18 will show the arrangement covering the 20-year period and the subsequent reduction to, I believe, it finally wound up with around a 10-year period. But the whole operation was a 20-year period, and continues to be one. [fol. 3172] This witness also testified as to the change-over in the maximum and minimum provision of the sales contract, which the defendant changed, your Honor will recall, after your decision in 1948, and how it was presented to him, with the figures already there, and your Honor knows how those figures were determined by the defendant. But here again we see that the effect and the intention of that maximum-minimum provision was clearly to make that station, and in fact it was, a 100 per cent Richfield petroleum products outlet, under that type of a contract.

Then we have Mr. McRae. I don't know as your Honor recalls him, but I commend his testimony to your consideration because this witness, I believe, had pretty nearly every type of an arrangement that was invoked with the defendant. He started out as a 337 operator, and finally wound up as an L-O operator. Those exhibits, your Honor, are Exhibits 19 and 19-A on the McRae testimony. That witness testified, among other things, to the fact that when he was a 337 operator he wanted to handle competitive petroleum products and gasoline, and he was told by the representative of the defendant that that was out, that it had to be 100 per cent Richfield or else there was no Richfield gasoline sold.

Now, that corroborates and supports the testimony in [fol. 3173] this record, if it needs support, concerning that policy, which was made of record, shall we say in writing, by the Dinkins' memorandum back in Government's

Exhibit 9, and here it is in operation, and as the testimony of the supervisor for the Arizona district—I have forgotten his name—I believe it was Mr. Nicholson, and of Mr. Bradford, who also testified when he became supervisor that the split-pump situation was cleaned up in this area.

In other words, here we have McRae at the dealer level trying to get competitive gasoline being told by the defendant that they did not sell anybody under those circumstances, that it had to be 100 per cent, and as your Honor knows, the record clearly shows that insofar as gasoline was concerned it had been 100 per cent at all of the outlets during the entire period of the time, and is so at the present time.

[fol. 3174] Then I think the McRae testimony is perhaps also of some import, because it shows that this dealer under an L-O type of arrangement, your Honor will recall, was called into the armed services. He was told by the defendant that he could not continue to have that station under those circumstances, but the record shows that he did and that he did not surrender that station until sometime in 1946.

So this control which I choose to call a sword of Damocles hanging over the head of all of these dealers does not add up to changing the relationship between the parties at all. It is merely typical of the exercise of a monopoly power, which we will discuss when we get to the legal part of the argument, which is exercised just as illegally as if it was a national monopoly under Section 2 of the Sherman Act.

Mr. DeLonge's testimony——

The Court: I think we had better stop at that. I do not want to run through the whole noon hour but will give you a rest. We will take a recess until 2:00 o'clock.

Mr. Dixon: All right, your Honor.

(Whereupon, a recess was taken until 2:00 o'clock p.m. of the same day, Tuesday, June 5, 1951.)

[fol. 3175] Los Angeles, California,
Tuesday, June 5, 1951. 2:00 P. M.

The Court: All right, Mr. Dixon.

Mr. Dixon: Your Honor will recall the testimony of the witness DeLonge, who had the second best station in gallonage in his area, and Exhibit 20-A relates to that particular witness. The record shows that in this particular situation, your Honor will recall, there was some damage to some of the equipment which the defendant had refused to repair, and which the witness or operator was forced to repair if he wished to carry on that phase of his business.

We submit that this clearly shows the control over the premises which vested in the operator of the L-O outlet, and the fact that he was operating at that location leased to him his own particular business.

Now, your Honor will recall that this witness was told that he had better get rid of some competitive oils, because the representative of the defendant would hate to see him lose his business over any oil.

Of, course, your Honor knows what happened. He did lose the business, and he was subsequently sold out—I mean the inventory, and so on, was sold out to someone whom the defendant secured, rather than to one whom the operator had secured, and concerning whom, if he had made his arrangement, he would probably have been able to salvage some of his investment in the premises.

[fol. 3176] Now, in connection with this 24-hour arrangement, as I suggested in commenting on the testimony of one of the other witnesses, the defendant, at the time the L-O operator is given possession of the premises, sometimes when questions were asked did assure him that the occupancy may be for an extended period of time in spite of this provision.

For example, the witness Ellena at Reno inquired about the provision and asked Mr. Reed, the representative of the defendant, who was concluding the arrangements in turning over the property to him, and he was told by Reed, "Don't worry about it. Richfield Oil Company is a good company. You don't have to worry about that 24-hour lease."

That witness was subsequently checked out, as your

Honor knows, for failure to comply with the provisions of the oral arrangement that he should handle the defendant's products on an exclusive basis.

Another witness, Mr. Smith, from Los Angeles, inquired about the 24-hour termination clause, and he was told by Mr. White, representing the defendant, "It was a thing I didn't especially need to worry about. He said that they didn't often write an operator out," and the provision was discussed with Mr. Phelps at the defendant company, and he stated, "As long as I play ball with Richfield that I would be all right, that they had a ground lease for 10 years, with [fol. 3177] a 5-year option, and that in his opinion I would be in there for 15 years."

[fol. 3178] In other words, I mention this type of testimony, your Honor, to indicate that the L-O type of arrangement was in fact, as it is on the face of the written document, a lease and transfer of possession over to the lessee and that as part of this transaction there is this oral arrangement or contract or understanding that is entered into at that time whereby the lessee agrees to purchase all of his requirements of petroleum and TBA products from or through the defendant.

Passing to the witness Ogburn, your Honor will recall that that witness was a 3-C operator and that witness testified to the effect that no competitive signs were permitted at his outlet, and that the competitive oils which he handled a his outlet were delivered to his residence.

Now, there are a couple of witnesses that I think we might mention in passing which deal with the manner and method of check-out as far as notice is concerned. This witness Ellena that I mentioned, who had the investment of around $3,000 and whose rent was $50 a month minimum and a cent a gallon above all over 5,000 gallons, was one of the witnesses, you will recall, that was terminated, and it was done in the manner of—well, here is his testimony, page 1264 of the record:

> "McGowan came into my station one day and he hung around all day. So I asked him, you know, what was wrong. And he never said nothing. So he came the [fol. 3179] following day and he came the following day and about the fourth I asked him what was wrong.

So he asked me if I would go for a cup of coffee with him. So I went downtown and got a cup of coffee with him. And he said, 'Mr. Hunt told me to tell you that you are going to have to leave within 24 hours.'

"Q. Did Mr. McGowan say anything else at that time in explanation of the news he had for you?

"A. Well, Mr. McGowan told me that I was one of the best operators in Reno, Nevada, that I kept my station clean, took care of my customers, and that he couldn't help it. It was a damn, dirty shame to pull a trick like that on me, that he was just taking orders from Mr. Hunt."

A cup of coffee method, of course, was comparable probably to giving him a drink of hemlock because it had the same effect and he was asked to partake of that because he had not complied with the arrangement made either at the time of the lease or subsequent to it that he was to purchase all of his petroleum and TBA products from or through the defendant.

And then, of course, Mr. Wagner, another witness your Honor will recall, the same thing happened to him and he went right up to Mr. King and tried to get some relief, but with the same result.

The change-over under the 3-C arrangement type of sales [fol. 3180] contract is further exemplified by the testimony of Mr. Strable, Exhibits 14 through 14-D, and the testimony there was, your Honor will recall, that those documents were brought in to him, he was asked to sign them, the maximum and the minimum figures were already there, and he finally signed and executed the documents.

So that, hunting through the testimony of all of the dealers, of the three different types of outlets, we find that either expressed in writing or oral requirement is the exclusive dealing provision that requires the operators of each one of those types of outlets to purchase all of his petroleum products from the defendant, and to purchase the TBA accessories, particularly in the L-O type of station, from the defendant and, perhaps, in a lesser degree because of the lesser ability on the part of the defendant to apply the pressure to the 3-C and to the 337 type of outlet from or through the defendant.

But the effect of this arrangement is further shown, that is, the closing off, the locking off of this market from all competition, through the testimony of the suppliers. Your Honor may recall Mr. Carlson, one of the suppliers. He testified that he was selling about $150 worth of TBA products to one of the dealers when he was operating another outlet, that then that dealer became an L-O operator and immediately, without any disagreement with Mr. Carlson and without any dissatisfaction with the product that Carlson was selling that dealer, those purchases dropped off to not [fol. 3181] more than $5 to $10 a month, and those were limited to items which the operator could not secure under or through the defendant.

Mr. Brewington, another supplier.

The Court: Wouldn't that justify an inference that there may have been a distinction between that type of operation, an L-O, and the previous dealership operation?

Mr. Dixon: I think so, your Honor, yes. In other words, it certainly illustrates the restriction in effect and the way that arrangement, which is the oral arrangement, operates.

The Court: No, I did not mean that.

Mr. Dixon: I am sorry, your Honor, I did not get the question.

The Court: I thought you were arguing against yourself because, by emphasizing that this change to L-O resulted in the drop, you are emphasizing the difference between the two methods of operating, where you claim the same underlying principle is behind all.

Mr. Dixon: I am sorry, your Honor. I should have made it clear that the dealer was not operating any Richfield outlet when he was making the $150 purchases. I believe he testified that he was operating a Shell station.

The Court: Oh, yes, that is right. Yes, that is all right. It was my error.

[fol. 3182] Mr. Dixon: I am sorry. It was my fault I did not make that point clear.

I refer to that to illustrate what happens when the supplier gets a market. I mean he is selling a dealer or he is selling someone. In this case Carlson was selling the operator $150 a month or more of TBA accessories. Then the operator goes to the L-O outlet and that market is com-

pletely thereafter closed insofar as the supplier is concerned because of the Richfield arrangement.

Brewington testified to the same effect and gave specific examples. And Mr. Burris testied that the dealer told him: "Don't bother me about things that I can get from the defendant. Under this arrangement I must buy them from the defendant whether I want to or whether I would prefer to purchase them from you or not."

And then there was the supplier Brown who said that he could give the dealer better buys on tires and other products, but the dealer still could not buy from him even though they were the same items.

And the witness Behm, a supplier who happened to be present when he was trying to sell an L-O dealer and the merchandiser of the defendant was there, and he was told by the defendant's representative that if the dealer bought anything, why, Richfield would, as he put it, "lower the boom" on the dealer.

[fol. 3183] So other examples might be given, but those are at least sufficient to show the effect of the operation here, the effect of this arrangement, this exclusive dealing arrangement that is a part of the L-O transaction in closing this market to all competition from other suppliers and making it, in fact, entirely and exclusively the market of Richfield.

Now, I want to just comment briefly upon the testimony of a couple of witnesses who referred to the Standard Oil decision because, as your Honor knows, after that decision the defendant did make some changes that we have already referred to in the sales agreement, the 337 sales agreement, and the painting agreement, and also some changes were made in the 3-C type of deal.

Mr. Delucchi, who was an operator in San Francisco, testified that he had a conversation in July of 1947 with Mr. Kintano of the defendant, and told him, that is, the operator told the defendant's representative that he could now sell whatever he wanted to, "and he said I couldn't and I told him that I could because the government guaranteed that I could, and he replied, 'Oh, no, you can't. If you do, you just won't sell any more gas.'" That is at page 1360 of the record.

Then Mr. Baird, another operator at Reno—I am sorry, not an operator, but he was a supplier who was endeavoring

to sell an L-O operator on some of his products in July of [fol. 3184] 1949, and your Honor may recall that he had with him the letter which Standard had sent to its Chevron dealers as a result of that case, and the purpose of using it was to emphasize to the operator that the market was now open to competition, instead of being excluded, as it had theretofore been. And Mr. Hunt, who is the representative of the defendant, was there at the time, and he was the Richfield merchandiser, and they just laughed it off and said it didn't mean a thing.

I mention that, your Honor, of course not to point out that there is any particular significance to it, but to show and to illustrate the fact that these changes which were made in the defendant's contracts, that we have already discussed, after that decision have not in fact changed its operation or have not in any sense served to open up this market, which the government contends has been completely locked up by the type of arrangements that have been invoked by the defendant, and which are represented by the oral and written agreements that have been submitted to the court.

Now, with reference to the TBA arrangement, your Honor may recall Exhibit 8. That is a memorandum signed by Mr. Dinkins, which was sent to all of the supervisors of the three areas of the defendant, and which was directed specifically to Mr. Miller. That is of particular interest, I believe, because it not only points out the profit which the [fol. 3185] defendant reaps in this case through the TBA program and the importance that it attaches to it, but it also expresses in language that I think cannot be equaled the policy of this defendant on TBA products.

Mr. Dinkins states as follows, with reference to the TBA program, on page 2 of Government's Exhibit 8:

> "If it is a commission agent who takes no interest in TBA, then we need a new commission agent."

And the testimony in this case shows that, as some of those agents have testified, they were canceled out either because they handled other products or because they weren't complying with the Richfield arrangement. Continuing:

> "If it is a dealer who refuses to interest himself in this profitable endeavor, then it's a new dealer."

Now, Mr. Dinkins doesn't say "L-O operator" in this exhibit, your Honor. He doesn't call him an L-O operator. He says it is a new dealer if the dealer refuses to interest himself in what he calls "this profitable venture."

We submit that the evidence here shows that in many instances these dealers, whether they are 3-C, 337 or L-O operators or dealers, can make in many instances more of a profit from the purchasing of the same items from sources other than Richfield than they can by being required to and [fol. 3186] following the Richfield practice of requiring them to purchase them through the Richfield TBA distributor.

Now, the record in this case shows with reference to TBA that the defendant makes direct sales to some of these outlets, and that it makes other sales to the distributors, who are assigned the Richfield stations in those areas, without reference to whether they are L-O, 337 or 3-C. And the record also shows that this arrangement in the year 1950 netted this defendant a gross profit of over $600,000 on these operations alone.

It probably is clear, or it may be that the evidence shows that greater emphasis was placed on the L-O operator in requiring him to handle these products than perhaps could be exerted pressure-wise, at least, on the other two types of dealers, but the fact remains that in all three instances the record shows the supervision and the policing of these three outlets for the purpose of making certain that competitive products are not sold or handled in the outlets inspected or to which these three types of arrangements are applicable.

Government's Exhibit No. 30, for example, shows that the salesmen made reports even as late as the early part, as I recall it, of this year—no, it was last year, in 1950—concerning unauthorized signs in the 3-C and 337 type of outlet.

Now, just one comment concerning the policy of this de- [fol. 3187] fendant not to sell gasoline to any outlet which did not handle Richfield gasoline 100 per cent. I believe that has been pretty well established and is unrepudiated by the evidence.

The record clearly shows that this policy started back in 1938, in Government's Exhibit 9. The testimony of Mr. King and the testimony of the supervisors that I mentioned, Mr. Nicholson and Mr. Bradford, shows the operation of it in their particular territories, and the policy of the company

not to sell any outlet any Richfield products except on a 100 per cent—I mean, gasoline except on a 100 per cent basis.

The record shows a specific rejection, at the request of the witness McRae, to handle competitive gasoline other than that of the defendant.

Now, the effect of this policy is well shown by Government's Exhibit 9-A, in operation, where the exhibit shows that, "When we were in the account on a split pump basis, he averaged 13,500 gallons per month. Since we took the account over on a 100% basis on February 7th, we have averaged well above 40,000 gallons per month. Last month the gallonage was 47,726."

And then it continues: "When we were in the account on a split-pump basis our motor oil volume averaged seven gallons per month. Since we have been in on a 100% basis we have averaged over 55 gallons per month, all of which is [fol. 3188] still only a drop in the bucket compared to the account's total motor oil volume."

So the defendant's own exhibit and record shows the statement as to the effect of this 100 per cent policy on the part of Richfield, which is carried out, first, in the oral arrangement made with the L-O operator, under the 542 form of lease, by an oral contract of sale which was further carried out in the 3-C type of arrangement, by the exclusive dealing provision of the sales contract in that arrangement, which was modified after your Honor's decision in the Standard case to a maximum and minimum requirement provision, but did not change, in effect, the 100 per cent nature of the contract, and, further, by the 337 type of sales contract, where the maximum and minimum provision also operated to have the same effect.

So we come now to the question of law that may be applicable to these situations.

Before I discuss that I think it might be well to comment, in closing, on the evidence that with reference to the contention of the government that all of these operators of the three different types of outlets are in fact independent businessmen, that the defendant, we believe, have themselves recognized this fact in their advertising over the radio. The record shows, for example, that as late as 1950, February 21, 1950, this defendant in its radio advertising on February [fol. 3189] 21, 1950, March 8, 1950, and again on March 9,

company for all funds received from the sale of Richfield products. Richfield relinquishes all control to the property under this arrangement that it has, and it has elected to do so, and the arrangement is only tied in to an outlet at which the dealer resells those products.

[fol. 3193] In other words, the operator of each one of these three types of outlets is buying the product for the purpose of resale from the defendant, and it is obviously buying them on an exclusive basis under the evidence before this court.

And now, we submit that, certainly insofar as the 3-C and the 337 type of arrangement, that those provisions are applicable, that the Standard decision clearly applies.

What about the other outlet, this L-O type of outlet so-called? As to that, as your Honor has indicated, the defense appears to be that in the nature of confession and avoidance. In other words, they admit the arrangement in substance, namely, they admit that they have required the lessee under this arrangement to buy all of his products from Richfield. So, standing on that basis alone, there is no difference between the arrangement and the facts and the various types of arrangement involved in the Standard case.

But what does the defendant do with that situation? He says, "Why, yes," faced with the facts which they must admit. They say, "Yes, we have done that. Yes, we have closed off this market from competition, but we have a right to do so."

Now, let us analyze that for a moment. What is the basis of that right, if there is any? The Government contends that there can be no such right under the arrangement invoked in this case, on the basis of your Honor's ruling and [fol. 3194] affirmance of that ruling by the Supreme Court.

That requires, perhaps, a little further analysis of the factual situation relating to this arrangement. What is it?

We submit, first, that there can be no question but what this property has been definitely turned over to the lessee, the dealer, the operator, whatever he is to be called. In other words, we have here an actual lease. It is not a license. It is an actual lease. It contains the usual provisions of a lease, imposing on the lessee the obligation to keep the property in repair and the various other provisions that we

have previously discussed. It is in every sense of the term a lease. It provides for a minimum rental which is payable in advance on the first of each month, and then the additional rental that might be computed is billed to the operator after the 10th of each month after the sales at that station have been determined.

But nowhere in the written form of the lease is there anything which negatives the legal conclusion which we submit must be drawn from that document that the defendant has fully and completely turned over to the operator or the lessee or the dealer, whatever you want to call him—they have surrendered the possession of that premises to him.

What have they surrendered it to him for? They surrendered it to him for a stipulated rental, which is the usual form of arrangement in any lease where the lessee agrees to [fol. 3195] pay dollarwise for the use and occupancy of the property which is turned over or surrendered to him in the lease.

If there was no rental here, you might have an arrangement where you might say he was the licensee agent, but you do not have that arrangement, if the court please. There is a distinct arrangement here of landlord and tenant, or lessor and lessee, that is created between the defendant and every dealer or lessee under the Form 542 type of lease.

I think your Honor's decision in that respect—I mean in the Owl Drug case which you pointed out to us—clearly establishes that fact, and that there can be no question but what that was the intention and purpose of it.

So, absent anything else, absent any oral arrangement or understanding, we have clearly here the relationship of landlord and tenant and it might as well operate to that end. In other words, the lessee might handle any gasoline insofar as the written provisions of this lease are concerned and pay to the defendant on that basis, because presumably that embodies the entire arrangement between the parties. Now, you have foisted on top of that this oral arrangement, and let us pause for a moment and see what that is.

The Government submits that this arrangement can be nothing other than a contract for the purchase and sale of petroleum products and TBA products from or through the defendant. Now, the record clearly shows that that is what [fol. 3196] you have here. The operator is buying gasoline,

he is buying oil, he is buying automotive accessories from or through the defendant, and he is paying for those products to the defendant. So that this oral arrangement is obviously one of sale of products, and that is where we get into the arrangement that the Government is challenging in this case which is tied into, of course, the lease.

That arrangement requires or is in the nature of an exclusive dealing type of arrangement, clearly. I submit that there cannot be any question about that. It is indisputable. As a matter of fact the defendants contend that that is what they contend the arrangement to be.

So that we have this contract of sale which is coupled or at least worked into, but not a part of, the lease itself.

Now, what changes the arrangement? There is never any change there, if the court please, we submit, between the arrangement of the lessor and lessee, and the buyer and seller of products, as long as the lease is in effect.

The defendants have inserted this 24-hour cancellation provision into the lease itself. That does not in any sense of the term negative the legal conclusion that is inescapable that it is still a lease. And I submit that it is still a lease, even with that provision contained therein.

But what is the purpose of it? The purpose, your Honor, is no different, I submit, based on the evidence here, than [fol. 3197] the comparable provisions in the 337 and the 3-C type of arrangements which give them a five-day cancellation right to stop any further sales to the operators under those types of arrangement. The purpose of it was to put the pressure on the dealers to make them in a position to enforce the exclusive dealing type of arrangement.

In other words, this 24-hour cancellation clause is nothing more than the sanction, and I submit it is an illegal sanction when used as part of this arrangement, and the Government challenges it in every respect, that it is an illegal sanction to enforce or to enable them to enforce the illegal exclusive dealing type of contract and sales.

The Court: I do not remember at the present time, but is there in those leases the usual condition that in a bankruptcy, or if there is a levy of attachment or execution they may also terminate?

Mr. Dixon: Yes, your Honor, it is. You mean in the 542 lease?

The Court: Yes.

Mr. Dixon: The L-O lease.

The Court: Yes.

Mr. Dixon: I have forgotten now just what it is.

The Court: I am just thinking that clauses like that are contained in many leases where the lessor has a substantial interest and wants to protect himself against acts of credi- [fol. 3198] tors that might destroy that interest, in which event, of course, you have an almost immediate termination upon the happening of these contingencies. Go ahead. It is not very important.

Mr. Dixon: Yes.

The Court: Of course, the 24-hour clause had other purposes here and was broader than that.

Mr. Dixon: Yes. The Government submits that the record shows that the purpose of this 24-hour clause was not to in any sense of the term protect the defendant's property at all. In other words, the purpose of it was to enable them to force this operator or dealer to comply with the oral arrangement to buy 100 per cent from Richfield, and nothing else. The testimony shows that that is the only time that they ever enforce it or invoke it.

Of course, they might come around and say the restroom is not clean, as they did in the Standard case, and they can find some other reason for doing it, but the record here in its entirety, we submit, shows the intention and purpose of this arrangement was to give some sanction to an illegal arrangement, that illegal arrangement being the oral contract of sale entered into between the defendant and the operator on an exclusive type of deal or arrangement. That was the same sort of thing that we had in the Standard case in the uncontracted stations on the 100 per cent basis and, in a modified form, it was the same sort of thing that your [fol. 3199] Honor passed upon in the Standard case where the operator—the dealer, rather, was just put in possession of the property under a dealer and dealer TBA type of arrangement, with no lease at all.

We submit that what the Sherman Act is concerned with are two things: The purpose and intent of an act and the effect of that act. And we submit that the evidence in this case clearly shows a clearly expressed intent on the part of this defendant to control this entire market to which they

are selling their products, and that they have effectuated that purpose and intent by means of these contracts and by means particularly in the L-O type of a station with the oral arrangement which is sanctioned that is given effect by the 24-hour cancellation clause, nothing else. And when you have that kind of arrangement, with the effect such as the evidence shows to exist in this case, we submit you have an unreasonable restraint of trade in violation of Section 1 of the Sherman Act.

It would be presumptuous for me, your Honor, to go into a discussion of the purpose and intention of Congress in passing the Sherman Act. Your Honor is as familiar with that, perhaps more so, than I am. But suffice to say it was aimed at every type of restraint of an unreasonable nature.

And I submit that, coupled with the lease in written [fol. 3200] form here and the oral arrangement in the L-O type of outlet, that you have an arrangement which is illegal, and I contend is illegal per se under the Sherman Act, and it is illegal per se because the intention of the defendant to effect this restraint is clearly shown and admitted on the face of the record.

To get back to their argument, as we understand it, they say, why, this is our market. In other words, we have created this market, we built the station. We have got some money invested in this station and therefore we have a legal right to make everyone who leases from us buy all of their requirements of petroleum and TBA products from us. In the latter category the defendant does not even make them—something they do not even manufacture. They are using this outlet as a means of additional profit. After they leased it, after they surrender possession of it to the dealer, they try to emphasize this restriction on him and then try to enforce it by this sword of Damocles that is hanging over his head all the time, the 24-hour cancellation.

I submit that when you take the oral arrangement and the written lease together the picture here is complete, and it is obvious the market here is this dealer wagon. You have got a buying and selling, as you have in any market, and that is not one that Richfield has created at all.

The market here that is being restrained is the dealer's market, his right to purchase products, petroleum products [fol. 3201] that his customers want at the outlet which he

has leased and for which he is paying a rental. They come to a station, they want different kinds of oil, they want different kinds of tires, they want different kinds of other products, and they have a right to assume that that dealer there will be able to get them for them because that is his station. He has leased the property. He is paying the rent. He is paying the employees that he hires, if any, and he is spending his time there. He is not an employee of this defendant. He is not receiving a nickel from the defendant by way of pay. Every cent and every dollar that he makes he is making through the resale of some products at that outlet to the public, and that is his market.

Now, if the defendant here had chosen, as Standard Stations did, to sell to the retail market through their own outlet and operate their own outlet, that might present a different question. We would not be before your Honor on that particular question at this time.

But when they have elected, as they have in this case and as they did in the Standard case, to lease out or to surrender the possession of the property that they owned or that they leased or that they had spent some money on, to somebody else, I submit that under the Sherman Act and the Clayton Act, they cannot tie any strings of that kind to a lease of the type that they tried to do in this case. When [fol. 3202] they tried to do so, they are violating the spirit and the purpose and the intent of the Sherman Act in every respect.

In other words, what you have here is a very clever and devious device which has as its conceded purpose the monopolization of this dealer market of over $45,000,000 in the last year, 1950. And if this device, this arrangement, the lease and oil arrangement, is legal under the Sherman Act, then I say to your Honor that the spirit and purpose of that act have no account in our economy today, because this device has been one of the neatest ways of getting around the decision of this court, affirmed by the Supreme Court, that I have ever imagined would be possible under any phase of the law.

But the market here, as I said, to get back to that, is this dealer market. It is not the retail market. It is the purchases of the dealer that is most threatened here, his ability,

his right to purchase as an independent businessman the products that he sells at that station from whatever source, I submit under this kind of a lease must be impaired, and that anything that endeavors to impair it in the manner in which it has been impaired in this case by this exclusive type of oral arrangement violates not only the spirit but the intent and purpose of the Sherman Act and is illegal under that Act.

And I submit further that it is illegal per se where the [fol. 3203] intention to do so is conceded and clearly admitted as it is in this case.

Now, that this is a contract of sale I think is obvious. I am just going to refer briefly to the Standard Fashions case. Your Honor is already familiar with it. 258 U. S. 346, decided in 1922, one of the older cases. But that case held that the contract whereby the defendant agreed to purchase from complainant a stated quantity of patterns, etc., was not a contract of agency or joint venture, though it was denominated "contract of agency," but was a contract of sale.

And, as your Honor has already pointed out, we do not care what you call this arrangement. It is not what you call it that counts. It is what you have got, what you are dealing with. And the dominant characteristic of this arrangement is sale, not agency, not joint venture. What you have here is a sale, and that is the purpose of the defendant to sell its products to these dealers. It is not anything else.

The defendant is not selling its products to the consumer. It is selling them to the dealer, and that is the purpose of this arrangement.

So how can we avoid the inescapable conclusion that it is a contract of sale and not of agency, not a license but a lease.

I agree that it may be rather difficult sometimes to place [fol. 3204] these arrangements in any particular category, but we submit that that is not necessarily the test here. The test of whether you have a violation of the Sherman Act depends upon whether you have restrained commerce and restricted the market. And under the appreciable segment doctrine of the Supreme Court and of this court as applied to the Standard case, you can't foreclose a substantial market from competition. And the defendants must con-

cede that, and their only defense motion is that this is not a market that is open to competition, this is our market.

In other words, they say we have closed this as a market. Well, I do not know how they can justify that closure, when we have contracts of sales of the products involved. If it were consignments, it might possibly be so, but that is not the type of arrangement that you have in this case.

Now, those two other cases that we might briefly refer to, your Honor, on the appreciable segment doctrine, the first of those is United States versus Maryland and Virginia Milk Producers Association, 179 Fed. (2) 426, and the other is U. S. v. National City Lines, et al., 186 Fed. (2) 562, both cases affirmed by the Supreme Court. Those cases deal with the appreciable segment doctrine. It is almost in a sense, perhaps, obvious that we need not even comment on them.

The Court: The National City might have been my case if I had not transferred it.

[fol. 3205] Mr. Dixon: Yes, you got rid of that one, your Honor.

The Court: I sent you to Chicago on that one.

Mr. Dixon: But in that case the defendants said that the appreciable segment doctrine did not apply. They said you can't monopolize a market of that type throughout the country. In other words, the suppliers went in and, as your Honor knows, took over the market and excluded all competition from the National City Lines purchases. And their argument in the Court of Appeals was that you could not attempt to monopolize commerce in that manner, that the appreciable segment doctrine did not apply.

So the Court of Appeals disposed of that argument on the basis of the Yellow Cab case, on the basis which your Honor is thoroughly familiar with and, held, of course, that that was the doctrine applicable to it. In view of the changing economic conditions and situations in the country, that that was the purpose and intent and the spirit of the Sherman Act to reach that type of restraint. And where you lock off an appreciable segment of interstate commerce from all competition and close it to competition, under those cases and under the Standard decision you certainly violate Sections 1 and 3 of the Sherman and Clayton Acts.

Now, I am not going to take any more time, your Honor, to discuss the law applicable to the facts in this case.

To briefly summarize it, we submit that the appreciable [fol. 3206] segment doctrine does apply to the facts of this case, that you have an appreciable interstate market here, a segment of an interstate market in the amount of $45,000,000, that your decision of this court in the Standard case is clearly applicable to the types of arrangement, all three of them, that are involved, and which the evidence shows the defendants have put into effect in this case, and that the Standard case is a precedent in every respect for the types of arrangement that the defendant has resorted to here in this case to effectuate the restraint. And, as we analyzed those arrangements this morning, we pointed out how they could be brought, the 3-C, L-O station arrangement, and 337 type of arrangement could be brought within one of the many different types of arrangement which your Honor held were effective illegal restraint under the Sherman and Clayton Acts in the Standard case.

As I suggested, we are dealing here with a market. It is not a market that these defendants have created at all. They had turned over a property to the operator or the dealer or the lessee, and then it is from that point on it is up to the lessee or the dealer to create a market for his products. And having surrendered possession of the premises to him, we submit that they cannot impose any illegal restraint on the use to which those premises can be put where the effect of that arrangement is to accomplish the unrea- [fol. 3207] sonable restraint such as is effected in this case.

And on that basis, your Honor, we submit that this court should enter a decree in favor of the Government. We submit further that when it comes to the question of a decree, that the 24-hour provision should be specifically dealt with and that the defendant should be enjoined from cancelling this lease or any of these L-O type of leases, Form 542 leases, except for any breach of any of the written provisions of that lease. As to that, the Government is satisfied that will effectively prevent them from going in, as they have in the past, and forcing thees dealers into an abject position of serfdom where they cannot even buy anything from anyone else and cannot carry on their business in the

American way under our system of a competitive economy such as the Sherman Act was intended to protect. That in entering the decree against the defendant in this case, adequate provision should be made to make certain that what the defendants have been doing in the past in enforcing the illegal contract by calling into operation the 24-hour cancellation clause must be effectively enjoined against, and on that basis we submit that the decree should be entered in this case as called for in the complaint of the Government.

The Court: All right. We will have a short recess and then we can go on with the defendant.

(Short recess.)

[fol. 3208] The Court: All right, Mr. Paradise.

Mr. Paradise: Thank you, your Honor. If the court please, by way of introduction, I would like to mention two points first, and then discuss separately the 3-C contracts and the 337 contracts, and then end up with a discussion concerning the L-O stations.

The two points that I would like to make by way of introduction are, first, the point that I made at the opening of the case, that this case actually involves two completely separate and distinct subject-matters. One is the contracts and arrangements between Richfield and the L-O operators, and the second is the situation insofar as the independent dealers are concerned, the 337 stations and the 3-C stations.

We recognize clearly, as your Honor pointed out to us during the course of the trial, that the government's theory is that there is no difference between the two types of stations. We recognize also that the government's argument, as presented to your Honor today, lumps together and ignores the differences between the two, and actually has confused them.

In the first place, Mr. Dixon mentioned that here we have a total market of $45,000,000, and all his references to market and to foreclosure from market were as to $45,000,000. The court recognizes that is the aggregate of all three types.

Then Mr. Dixon mentions that we have foreclosed this [fol. 3209] market, referring to all three types.

All throughout the case we have tried to differentiate, for purposes of clarity, between the people in the L-O stations as operators, so we would know whom we were talking about, and to those in the independent stations as dealers, for purposes of clarity. Mr. Dixon has referred to them all under the blanket title "Dealer," and without showing that the testimony of a particular witness referred only to L-O operators, and actually did refer to that, leaving the inference, I am afraid, that there was testimony there concerning the independent dealers. I think the most illustrative reference of that sort was Mr. Dixon's argument concerning the changes in the defendant's form of contracts that were made, and were testified to by Mr. King and others, which followed your Honor's decision in the Standard Oil case in 1948.

Your Honor will recall Mr. King's testimony, first as to the changes in the 3-C type of contract. You will recall that the 3-C type of contract was an entire requirements contract, and that there were some—we will get to the numbers of them later—somewhere between two and three hundred 3-C contracts. Those were all amended and changed following your Honor's decision, and were put on a specified quantity contract basis, the same as the 337 contracts had been. Instructions were given at that time as to how the [fol. 3210] quantities were to be computed, to make sure the door was open to the dealer concerned therein, if he wanted to. He was not to be permitted to buy more than 85 per cent of his past requirements.

There were also instructions concerning the manner of computing quantities in the 337 contracts, and the 337 type of contract was changed at the same time to provide for a 30-day cancellation by either side, rather than just five days by Richfield, as it had been in the case prior to that time. And the painting agreement was changed to take out any reference to competitive signs, that might be misinterpreted.

Mr. Dixon mentioned those changes, which followed your Honor's decision, and then in commenting on the changes which resulted from those, he gave two illustrations. One was the Delucchi station, which he mentioned, where Mr. Delucchi was told by a competitive salesman

about your Honor's decision in the Standard Oil Company case, and it was pointed out to Mr. Delucchi that he could buy from whomever he saw fit. Mr. Dixon also mentioned as a second illustration Mr. Baird, a competitive supplier, and cited both of those as illustrative of the fact that, despite the changes in the contracts, there has been no change in the defendant's operations.

Now, I think that is where the confusion arises. Mr. [fol. 3211] Delucchi was an L-O operator, as recorded in the transcript commencing at page 1357.

Mr. Baird did so testify, that following your Honor's decision he discussed the matter of your Honor's decision with various people, he testified, about four stations. His testimony is in the transcript commencing on page 1601. All four of the instances that he mentioned were L-O operators. I think it is an unfair inference to leave by way of argument that the changes that were made in contracts respecting the 3-C and the 337 stations have resulted in no change. The fact is that the only illustrations that have been given are instances referring to the L-O operators.

All of the proof in this case shows there are certain basic differences between the two types of stations. The basic differences are pointed out in the stipulation of facts, to which I commend your Honor's attention, which is defendant's Exhibit A. The reference to the nature of the ownership of Richfield, its basic ownership, either fee ownership or lease in the L-O stations, and it discusses the nature of the ownership of the 3-C and the 337 dealers, the two separate types of independent dealers. They either own their own station, or lease them from property owners other than Richfield.

There are also basic differences in Richfield's organizational set-up. There is a sharp line of demarcation through- [fol. 3212] out the entire marketing organization. There is the merchandising part of the marketing department, which deals only with the L-O stations, and there is the salesmen's portion, which deals only with the independent stations. That is Mr. King's testimony, and it appears in the record at pages 1658 to 1666.

Mr. King testified that the merchandisers and the merchandising organization deal only with the L-O's. There

is in the record as Exhibits N, N-1 and N-2 the written instructions to merchandisers, and the different types of merchandisers, and the job classifications, showing that they have nothing to do with independent stations.

Similarly, there is in the record the job classifications and work habits of the salesmen. Those are exhibits N-3 and N-4. They deal only with the independents and not with the L-O's.

Mr. Dusto was the assistant division manager, in charge of the merchandising part of the Central Division. He gave a complete statement concerning the detailed relationship with the L-O operators. He had nothing to do with the independent dealers, and he testified that that was the uniform practice throughout the company's operations. All of the government's witnesses testified similarly as to the breakdown and absolute sharp line of demarcation within the defendant's marketing organization. I refer to the [fol. 3213] government's witnesses Pittman, Shewbridge, Minor, Weston, and Miller, all merchandisers, who testified they had never had anything to do with the independent dealers. All of the government's L-O operator witnesses also testified they never saw anyone but merchandisers.

Mr. Bradford, to whom Mr. Dixon referred during his opening argument, was not a supervisor for the company. He was a branch manager for the city of Portland. He testified that there were meetings attended by both merchandisers and salesmen, and it is apparent from an examination of his testimony, which appears in the record from around page 861, that his instructions concerning competitive products and the non-handling of competitive products and the non-showing of competitive signs had nothing to do with the independent stations, but solely had to do with the L-O stations.

Mr. Scollard's testimony, which appears in the record at around page 972, is to the same effect.

Mr. Bradford testified that as to the independent stations, and he admitted that you could not tell them what to do, and he also said it was the salesmen who dealt with the independent dealers.

Consequently, I point out again, by way of introduction, that no testimony concerning Richfield's relationship with

or control over the L-O operators should be considered by this court as having any bearing in connection with the [fol. 3214] allegations of the complaint concerning the independent dealers.

I mention again that that testimony cannot be used interchangeably. Mr. Dixon referred to the testimony of two TBA distributors, Pitts and Gates, and to the testimony of Mr. Scollard. An examination of their testimony will show that when they were talking about any limitations on competitive products or competitive signs they were not talking about independent stations, they were talking about L-O stations.

Now, the second point, by way of introduction, and I think that I would like to eliminate this at the very outset, is the distinction between the case at bar and your Honor's decision and the decision of the Supreme Court in the Standard Oil case. I feel that the two are most vitally different.

Let us consider first the application as to the independent stations, and, second, as to the L-O stations. In the independent stations in the Standard Oil Company case, you had admittedly exclusive dealing contracts. There were written contracts, and there were some that were oral contracts included, but everyone was admittedly an exclusive dealing contract. All the written contracts were entire requirements contracts on their face, and there was no question of denial of the exclusive dealing involved in the Standard Oil case. The sole issue in that case was with [fol. 3215] respect to those Chevron dealers who were independent dealers, and would be in the sense I am using them here, where they either owned their own station or leased them from others. The sole issue there was the effect of those contracts and the application of the Sherman and the Clayton law to them.

Standard's position, your Honor will recall—again I mention that it is presumptuous for me to comment on your Honor's decision in that case—but Standard's position there was that there was no effect on interstate commerce, that the contracts were not unreasonable in any way in talking about the practices of their competitors, and, as I say, there was an interstate commerce point. There was no

question of denial of exclusive dealing, where that is the only issue insofar as the 3-C and the 337 stations are concerned.

We admit freely that the 3-C contracts which were in existence from 1945 to August of 1948 were exclusive dealing contracts. Mr. King discussed that and explained it. He explained how the 3-C contract came into effect, but he also explained why and under what circumstances those contracts were changed in August of 1948, and in defendant's Exhibit A, which is the stipulation of facts between the parties to this case, it is stipulated that in August of 1948, and following your Honor's decision in that case every one of the forms was destroyed, negotiations were undertaken to amend all of those contracts, and to eliminate all [fol. 3216] exclusive dealing provisions, and to put them on a specified quantity basis, which your Honor recalls mentioning with approval in your decision in the Standard Oil case. And all of the contracts, with the exception of four, have been so modified and amended. So much for the independent station.

As to the L-O stations, as your Honor pointed out during Mr. Dixon's argument, it is the defendant's position that these are comparable to Standard Oil Company operated stations, as to which in the Standard Oil case you recognize they did not and could not violate the antitrust laws.

The L-O stations in this case can bear only a most superficial resemblance to the Chevron stations which had been leased by Standard to the dealers under the form of sublease.

There was no contention in the Standard Oil Company case, as there is here, that the occupants of those leased out stations were not independent. Standard admitted they were independent, and the testimony so shows, and it came out without Standard's objection, and Standard so admitted in its pleadings, and it made no objection in the appeal to the Supreme Court. Standard did not contend that they did not constitute a competitive market.

Furthermore, I believe I may have misunderstood your Honor, but I interpreted your Honor's remarks during Mr. Dixon's argument to be to the effect that Standard had also [fol. 3217] contended that its relationship with its leased

out stations was such as to be justified under the antitrust laws. I don't know to what particular contention your Honor was referring, or if I properly understood your remarks, but I have searched——

The Court: Well, Standard was relying on the Pick case, to the effect that contracts of exclusive agency are permissible, and I distinguished the Pick case by holding that that case is not involved in a restriction on commerce. I held that even though the contract may be legal, if its effect is to restrict interstate commerce, it would be illegal. And Mr. Dixon was contending in that case that a contract for exclusive agency is per se illegal. I did not follow him at all.

Mr. Paradise: Yes. Now, as pointed out in Defendant's memorandum on page 39, Standard had admitted in its pleadings, as appears in the transcript on appeal to the Supreme Court on page 91,—it admitted that the 1800 of its service stations were leased to independent operators by leases, and then it went on. The terms of the leases and the distinction of those leases is described in the Supreme Court's decision as being for six months, and I am reading from page 296, and the reference to the term is contained on page 38 of the defendant's memorandum. I gathered from reading the opinion that no sublease was for a term of less than six months.

[fol. 3218] Mr. Dixon mentioned in his opening argument that in the Standard case there were 87 of the subleases under Standard's form of sublease that were tentants at will.

[fol. 3219] I gather that that is taken from the exhibit which appears on page 1315 of the transcript on appeal to the Supreme Court in the Standard case, which discusses stations which are occupied, Standard stations which are subleased. And I am reading from the exhibit on that page part (b) of stations where Standard owns the real property, states this:

> "Occupied by independent dealer"——

Independent dealer, mind you—

> "under a contract of some kind obligating the dealer to buy his requirements of petroleum products from Standard, but without a sublease from Standard."

Now, whether it was the sublease or some other form of a written contract, I submit it was not a tenancy at will if a man had a six months' deal. That distinguishes this case, I think, from the Standard case on the proposition of duration. But more importantly, there was no question of whether or not this was a market in the Standard case, nor was there any question whether these men were independent businessmen.

I call your Honor's attention to portions of the testimony itself. Mr. Thompson, an official of the Standard Oil Company, your Honor will recall, testified on page 287 in an-answer to Mr. Dixon's question. Mr. Dixon's question:

> "In other words, he was, as far as the company was [fol. 3220] concerned, an independent businessman, shall we say?"

Mr. Thompson said: "That is correct." The witness also added:

> "And I am speaking of our policy of handling the account from a practical standpoint."

That is on page 287.

Mr. McClanahan, vice-president of the Standard, testified on page 267 in response to Mr. Dixon's question. Mr. Dixon asked him:

> "Is not the operator of this single pump or split pump station supposed to be an independent businessman?"

Mr. McClanahan said: "That is right."

> "Operating on his own?
> "A. That is right."

Mr. Mortensen was an employee of the Standard Oil Company and testified similarly on page 953. He was asked:

> "As a matter of fact, he is supposed to be an independent businessman under this contract, is he not?"

And he answered: "That is right."
And "Q. And to operate his own business?
"A. Yes."

Mr. Hodge, a branch manager at Nevada, was asked on page 962 by Mr. Dixon:

[fol. 3221] "By the way, Mr. Musser wasn't receiving any salary, was he, from the Standard Oil Company or Standard Stations, Inc.?
"A. No, sir.
"Q. You don't want the court to believe, do you, that he was under any obligation to take orders from you with reference to anything he did at the station?"

And Mr. Hodge answered:

"A. We never gave him orders."

I think it must be apparent the most vital differences between the relationship between Richfield and its L-O operators, and what was involved between Standard Stations which it leased to dealers, which it acknowledged were independent dealers.

So the issue is sharply drawn that in the L-O stations this is not a market, these men are not independent businessmen, and this is not a legitimate market to competitors, and there can be no violation of the antitrust laws either in fact or in contemplation of law. Passing then from the introduction to the discussion of the three types of cases, separately, and under which I would like to point out, first, the proof, the defendant's proof, and then to point out what proof, if any, there is contrary to it by the Government pertaining in each case to the particular type of station, and not having [fol. 3222] evidence pertaining to one type flop over and apply to a different type of station.

First, as to the 3-C's and the 337's, because I think that is purely a factual issue and can be disposed of rather readily. The complaint in this case particularizes, at least insofar as to the 337 stations, although the references to the L-O stations are confused with the 3-C stations. They have been thrown together because there is a sublease involved with both, although Mr. King explained the most vital difference between the L-O station and the 3-C station.

Mr. King testified, as your Honor will recall, with the 3-C station the station is owned or leased from the property owner, not from Richfield, by an independent service station dealer, who leases the property to Richfield and under the 3-C deal gets a lease back and also a sales contract. Mr. King testified that when that contract and lease is terminated, the 3-C dealer stays in occupancy of the station. He differentiated that sharply from the L-O station where Richfield either owns the property or leases it from a person having no relationship whatsoever to the L-O operator, and when Richfield's relationship with the L-O operator terminates the L-O operator leaves the station. It is Richfield's station. He does not continue handling gasoline in it at that location, and Richfield continues doing business there as it had in the past.

With respect to the complaint the allegations with respect [fol. 3223] to the independent stations, but here limited to the 337's, are contained in paragraphs 19 and 20.

In paragraph 19 it is the allegation that defendant has entered into a written painting agreement and a written sales agreement with approximately 1400 service station operators. Passing the description of the duration of the sales agreement, which has not been true since 1948, but was true at the time the complaint was filed, the complaint goes on to allege that in addition to those two written agreements, the written sales contract and the written painting agreement, that Richfield has entered into supplemental oral contracts and agreements and understandings with each of the 1400 service station operators whereby those operators agree to restrict the brands of petroleum products and automotive accessories which are handled by them to brands approved by Richfield, and also agree to acquire from sources designated by Richfield all automotive accessories.

In each case it is a matter of agreement and is so pleaded.

We submit that there is no showing and there is no testimony whatsoever of any oral agreement of any nature whatsoever on any of the 337 stations. I will analyze the testimony later, but I wanted to show what is charged in this case.

In paragraph 20 there is an allegation that threats, both express and implied, by Richfield that it will cancel the

[fol. 3224] sales contract, that is, the written sales contract, unless the oral agreement described in paragraph 19 is entered into, adhered to and complied with by those 337 dealers.

We submit that there is not a word of anything of that sort in the record before this court.

There is an allegation at the end of paragraph 20 that in instances too numerous to be mentioned the defendant Richfield has actually cancelled the written sales agreement of this 337 dealer—I am paraphrasing to reduce—to conform to the oral agreements, contracts and understandings complained of.

There is no showing of any cancellation of any 337 contract excepting in two respects. One, Mr. King's testimony that Richfield withdrew from some 40 to 50 split pump stations in 1938, and that the problem has not arisen since 1941, 10 years ago.

Second, his testimony that Richfield has cancelled 337 sales contracts but only in the circumstance where the 337 dealer had completely discontinued the purchase of all petroleum products from Richfield, and that his purpose was two-fold, in some cases so that he would be permitted to collect on a paint agreement, and second, to await the contract deadline.

Paragraph 21 of the complaint says that these contracts —and we are talking about the independent dealers—have [fol. 3225] had the effect of preventing and eliminating competition between Richfield and other producers of oil and of accessories.

There has been no showing of any effect whatsoever on competitors or on independent dealers.

Insofar as the allegations concerning 3-C and the 337 stations in the aggregate, I submit that this is not a problem of a conflict of evidence. It is a case of no substantial evidence in the record whatsoever that would support any finding of any exclusive dealing arrangement, agreement, or effect.

Now, the independent stations fall into two categories and I would like to discuss them separately.

First, there are the 3-C stations. Mr. Dixon during his opening argument mentioned the 2-B deals, but Exhibit A, which is the Stipulation of Facts, shows that this 2-B deal

which Mr. Dixon quoted from at some length has been discontinued in 1944, and all of the contracts of that nature have expired and there have been no contracts of that nature written since 1944, seven years ago.

First, considering just the 3-C dealer, and not the 337, what is the status of the 3-C dealer? Mr. King testified that he is the customer for whom Richfield is competing in competition with other oil companies. I refer the court to Mr. King's testimony at pages 1753 and 4, and at 1792 he also referred to the extra margin letter which is given to 3-C dealers on occasion to meet the competition, "intense [fol. 3226] competition," as he framed it, of other oil companies. I refer to pages 1890 and 1892.

It is stipulated in the Stipulation of Facts which is Defendant's Exhibit A—and I am reading now from page 3—and refer to the fact that dealer stations are in a category called under the title of "Dealer Stations," starting on page 3. The Dealer 3-C stations are divided in the stipulation between the early form which is known as the 2-B form which Mr. Dixon referred to, and the subsequent form known as the 3-C proposition or a 3-C deal. But as to the status of the dealer under the old or the new form it was still the same.

Now reading from the stipulation on page 4, starting in line 6:

> "The term 'Dealer 3-C Stations' as used herein relates to service stations owned by the service station dealer or leased by the service station dealer from a lessor other than defendant, which stations have thereafter been leased to defendant by written lease. Defendant has subleased such service stations back to the respective service station dealers and has entered into a written sales contract with such service station dealer covering the purchase of petroleum products by the dealer from the defendant."

And then it describes the type and form numbers of contracts.

Richfield's contact with that dealer, that 3-C dealer, to [fol. 3227] secure his business is made through a salesman, not through a merchandiser. These men are the inde-

pendents who are Richfield's customers. Mr. King so testified on page 1663.

Richfield's contact with that man after the contract is signed is likewise with the salesman. See page 1795.

The nature of the 3-C deal was testified to by Mr. King on page 1790. It consists of this lease, sublease, and sales contract.

Mr. Dixon referred in his argument to a paragraph of Exhibit 4, Government's Exhibit 4, as an illustration of Richfield's complete control over the stations. That paragraph is paragraph No. 3, which provides that the lessee shall use—Richfield's is the lessee from the owner or present senior tenant in this case, and "lessee" in this case refers to Richfield—

> "Richfield shall use the demised premises and improvements with due and reasonable care and on termination hereof shall deliver up said premises and improvements unto Lessor in good order and condition, damage and depreciation due to reasonable use, ordinary wear and tear, fire, storm," etc., "beyond control of Lessee excepted."

The reference or the portion to which Mr. Dixon must have made reference is in the second and last sentence, which says:

> [fol. 3228] "Lessor," which is the property owner, "agrees to commence, within 10 days after receipt of notice in respect thereto from Lessee, all repairs and/or replacements necessary in order to keep and maintain the leased property in a suitable condition for the operation by Lessee of a gasoline service station."

I see nothing in there that gives Richfield any control whatsoever concerning the type of product that is involved. That is a matter that relates to the repairs to make it suitable for operation as a service station.

Mr. King testified on page 1790 that the lease, sublease, and sales contract are all with the same person in the normal pattern of events.

He said that the Moore and Colmery stations were extraordinary, sporadic, etc. He testified that they were extra-

ordinary exceptions to the 3-C pattern. Those were two of the witnesses called by the Government where the property owner leased the property in each of the Moore and Colmery cases. Richfield had this lease from the property owner and then subleased it to Mr. Moore in one instance and Mr. Colmery in the other. That appears on pages 1795 and 1797.

Your Honor mentioned earlier in the trial the matter of whether things were sporadic instances or showed a pattern. [fol. 3229] The sales contracts which accompany the 3-C deal have been of two types. I should mention, in the first place, that neither type has ever mentioned tires, batteries or accessories. The sales contracts, of course, are limited to petroleum products, gasoline and oils.

The "entire requirements" was used by Richfield for the period commencing in 1945 and continuing until August of 1948.

Our stipulation of facts, which is Exhibit A, contains on page 4, starting in line 25:

> "The aforesaid prints of form 783 contained a provision requiring defendant herein as seller to sell and deliver and the service station dealer to purchase and receive the dealer's entire requirements of petroleum products for resale from the service station."

It continues:

> "In August 1948 there was printed:"

A form 783 sales contract with a print date of August 1948 which had eliminated therefrom the provision requiring the dealer to purchase his entire requirements. At the time of such print in August of 1948 all copies of the forms of the 3-C sales contract containing the entire requirements provision were destroyed and defendant immediately negotiated with all 3-C dealers to amend the former "entire requirements" form of sales contract and to execute in lieu [fol. 3230] thereof a 3-C operator's sales contract form 783 as of the date hereof. That is the date of the stipulation.

There are in effect only four 3-C sales contracts containing exclusive dealing provisions.

Now, the 3-C deal during the time when it was an "entire requirements" deal, from 1945 to 1948, was changed only

when Richfield had made an investment in the station because of competitive conditions. Mr. King testified to that effect on pages 1792 and 1856.

He testified that where competitive conditions did not require Richfield to make an investment, the 337 type of transaction was used, which is the simple sales contract which, in some instances, is accompanied by a painting agreement where the dealer requests painting by Richfield.

Mr. King described the type of equipment and improvements to the station and the money which constituted Richfield's investment in the station. See pages 1754 and 1856.

He stated that Richfield at the time it made that investment because of competitive conditions and at the time it made the 3-C deal with this independent dealer, did have the purpose of having the man buy his entire requirements of petroleum products from Richfield, and his purpose was, as he stated, he thought it was a reasonable request when Richfield made that investment. See page 1792.

I think that is important, your Honor, because Mr. Dixon [fol. 3231] has made the charge that the 337 sales contract, which has never called for entire requirements of either gasoline or oil—and it does not cover anything else—while it calls for a specified quantity, is, nevertheless, in effect an "entire requirements" contract.

From Mr. King's testimony it must be apparent that when Richfield expected the dealer and asked him and wanted him to buy his entire requirements of petroleum products, it said so very candidly and forthrightly in its written form and printed form. Mr. King so testified on page 1792.

The "entire requirements" form was discontinued in 1948 following your Honor's decision in the Standard case on the recommendation of the legal department, and the recommendation is testified to by Mr. King. So that the "entire requirements" contract has been determined in that case to be illegal. When Mr. Dixon in his opening statement mentioned that a change had been made in the 3-C type of deal, he made the remarkable statement—remarkable to me—that this change showed Richfield's monopolistic intention to control. I confess I did not understand.

I think Mr. King's testimony concerning the reason for making the change appears on pages 1792 and 1793. I think

the reason for that change and the reason why the change is made is significant in this case.

Your Honor is familiar with the cases wherein the prob-
[fol. 3232] lem of a discontinuance of past practices are argued to be moot, and the courts have held that that does not make it moot, an injunction may or may not be warranted. The question as to whether an injunction would or would not be warranted as to a particular past practice, as I understand it from the cases—and we can submit authorities to your Honor—is this: Injunction is warranted if it appears to the court that there is a reasonable likelihood and probability of the practices being resumed.

But on the other hand, if it appears to the court that there is no reasonable likelihood of past practices, which have been discontinued before trial, being resumed, then the injunction is not warranted.

The Court: That is but an application to this type of litigation of the general principle which obtains in all equity cases where injunctive relief is asked.

[fol. 3233] For instance, when we had the O.P.A. regulations, whether they related to rent control, or other things, we always made an inquiry into the past practices, which, first, go to intent, and, secondly, to determine the extent of the relief. For instance, if we were dealing with rent control, we inquired if the property had since changed hands and the defendant did not own any other property, because then there was no use to issue an injunction on the supposition that he might acquire property in the future. If the violation was an only violation, for instance, but nevertheless if the man owned an apartment house, then even a single violation was considered in determining whether injunctive process should be issued. So those principles you refer to are general principles that apply to the particular type of litigation.

Mr. Paradise: I refer to this for the reason that it seems to me that it appears most definitely from Mr. King's testimony, as well as from the stipulation, that the entire requirements contracts were discontinued completely in 1948, have not been used since, the forms destroyed, and, more importantly, that the reason for the change was advice that your Honor had held they were illegal.

I think that situation can be compared and contrasted with

the situation in the case of United States v. Linde Air Products Co., cited in defendant's brief, which is at 83 Fed. Supp. 978. In that case the defendant had also said there were [fol. 3234] practices that it had discontinued sometime prior to the trial, which did not warrant an injunction, but the court found and the testimony was that the defendant in that case had discontinued those types of contracts solely because of business expediency, that it was a matter of profit and that, therefore, the court was justified in saying there was a reasonable probability that this type of contract would be used again in the future.

The Court: Of course, it is Mr. Dixon's contention that, despite the discontinuance of the written requirement, in effect various devices are used to achieve the same results. In other words, he has said in his closing argument that there are provisions in the contract which are kept, like a saving as to damages, in order to result in this overriding oral understanding.

Mr. Paradise: I think that is the danger I attempted to point out in the beginning, your Honor, that Mr. Dixon's reference to that sort of damage was to the L-O stations, and if we would keep these matters distinct and in proper perspective, I think we would reach the proper result.

Mr. Dixon did mention that after the change in the form of the 3-C contract, there was no change in effect, and that there have been devices to keep these as exclusive dealing contracts, but there is no evidence in this record concerning that matter, and I request counsel to show me any evidence, [fol. 3235] if they are able so to do.

I will discuss the evidence when we get to the question of effect, but for this purpose I am just stating the reason why the change had been made.

Now, the new form of contract, which was used commencing in August of 1948, is also called Form 783, and it is Government's Exhibit 4-C. Mr. Dixon in discussing the various 3-C forms of contract in his opening argument mentioned all of them excepting this particular form, which changes the entire requirements contract to a specified quantity type of arrangement.

Now, that form, Exhibit 4-C, which calls for the purchase of a specified quantity, must be compared with the prior

form, which called for the dealer purchasing his entire requirements, and that is Government's Exhibit 4-B.

Mr. King testified as to his instructions at the time this form was printed, instructions as to his organization, to his divisions, as to the manner in which the quantities were to be computed. He testified that for the purpose of determining the quantity which the dealer agreed to buy, and your Honor, on examining that form, will see two columns, one minimum and one maximum, and Mr. King testified that the dealer's obligation is to purchase the quantity designated as the minimum, and he has the right to buy an additional quantity up to the maximum. But Mr. King's in-
[fol. 3236] structions as to how to fix the minimum, which is the dealer's obligation, was that that was to be fixed at a quantity not in excess of 85 per cent of the dealer's past purchases on an average basis during the period of a year prior to that, giving no account to the fact that the dealer might, because of increasing demand, and so on, increase his purchases. The dealer was not to be permitted to commit himself to buy in excess of 85 per cent of his past experience. See Mr. King's testimony at pages 1792 and 1793.

He also testified that subsequently those instructions were modified in 1950 to the effect that the dealer was not to be permitted to buy in excess of 75 per cent of his past experience. That appears at pages 1756 and 1873.

Mr. King likewise gave the reasons for those instructions, that those instructions resulted from advice to him, from the legal department, at the same time as the advice to change from the requirements form of contract. See pages 1756 and 1873.

He testified that the dealer's obligation was limited to buying the minimum quantity specified, and he has an option to buy the excess up to the maximum stated. That is on page 138.

Now, the number of 3-C contracts is set forth in Government's Exhibit 26-A on page 13, and I think it is worthwhile to take time out for a moment to examine that par-
[fol. 3237] ticular schedule. That refers to 3-C stations in all states, and the schedule, if the court has it available, shows the number of 3-C stations,——

The Court: What is your exhibit number?

Mr. Paradise: —as of December 31st of each year, commencing in 1938.

The Court: What is the exhibit number?

Mr. Paradise: Government's Exhibit 26-A.

The Court: All right.

Mr. Paradise: It is the one, you recall, where the statistical material was gleaned from the stipulation of facts.

The Court: That is right.

Mr. Paradise: The number of 3-C stations is stated for each year, as of December 31st of each year, commencing in 1938 and ending in 1951. The third column is entitled "Entire requirements provision," and it shows the number of those 3-C stations, the greatest number which were ever subject to the entire requirements. Those are designated by an asterisk in the third column.

It shows, as your Honor will recall, that the 3-C forms were used commencing only in 1945, but we have classified, for convenience, the former 2-B deal as a 3-C type of station, and that is in accordance with the stipulation in Defendant's Exhibit A, but picking it up with 1945. Prior to 1945 there [fol. 3238] never was a 3-C contract with a requirements provision in the sales contract. There were 2 at the end of 1945, 93 at the end of 1946, 182 at the end of 1947, and at the end of 1948 there were 43. In August of that year Mr. King's instructions had gone out to discontinue writing those, and to modify the existing ones. At the end of 1949 there were 26, at the end of 1950 there were 7, and as of the date of this case, by the stipulation of facts, there are only four in existence.

Now, the quantities the dealers have agreed to buy, the 3-C dealers, is in comparison with their requirements and in comparison with their former experience, and is well illustrated by Defendant's Exhibit Y, a statistical table which covers both the 3-C contracts and the 337.

This compilation shows that out of a total of 1640 contracts, which are all those in existence as of February 28th of this year, when this compilation was made, that the 1640 Total contracts covers both the 3-C sales contracts and the 337 sales contracts, and of that 1640 214 of them fell into a category where the quantity stated in the contract was 90 per cent or more of the dealer's past experience, and that was 13 per cent of the total. 560 of them fell in the category

called Group C, where the quantities specified in the contract, which the dealer agreed to buy, was between 80 and 90 per cent of the quantity which he had previously [fol. 3239] been buying for that station. That constituted 34 per cent of the total. 458, or 28 per cent of the total, fell in Group B, where the quantity which the dealer agreed to buy was between 75 and 79 per cent of his past experience. And a full 25 per cent, 408 contracts, fell in the category of less than 75 per cent. So from that you can see how well Mr. King's instructions were followed out, because this includes all the 337 sales contracts and all 3-C sales contracts in effect as of the time of this compilation. 87 per cent of the contracts fall in the category where the quantity in the contract that the dealer has committed himself to buy is less than 90 per cent of his past experience, and 53 per cent of the contracts fall in categories where his commitment is less than 80 per cent of his past experience. By the way, that group D, the category of 90 per cent or over, includes contracts in existence as of the date of this compilation, and that includes those that are the unconverted 3-C contracts, exclusive dealing contracts, where the dealer refused to permit an amendment or modification of his contract, and I suggest that those fall within that 90 per cent bracket.

There is also testimony that, when we get to the 337 contracts, the 90 per cent bracket is also covered by some of the contracts, 337 contracts, that were in existence before these [fol. 3240] Now, still speaking again of the 3-C dealers, Mr. King testified as to the buying practices of the 3-C dealers, and this I think is most important, because Mr. Dixon has made the charge in the opening statement that notwithstanding the change in the contract that was made in 1948, there has been no change in practice. I think Mr. Dixon stated that that appeared in the record, with that conflict.

Mr. King's testimony is decidedly to the contrary. He testified on page 1897 that over 75 per cent of all of the independent service stations, including the 3-C's, as well as the 337's, handled competitive oils, greases, and TBA. He testified that the same per centage showed competitive signs of these competitive items. He testified that purchases of gasoline in excess of the stated quantities in the

contract were voluntary by the dealers. See page 138. And he gave his reasons why they were voluntary. We will get to that when we discuss this split-pump problem that Mr. Dixon raised.

Now, Mr. King also testified that there is no control and no supervision, and no attempt at control or supervision by Richfield over the 3-C dealers.

On page 1794 Mr. King testified that Richfield has never attempted to terminate the sales contract or 3-C dealer and at the same time attempt to retain a leasehold interest in that station. He said it has not occurred. He said that [fols. 3241-3243] Richfield has never attempted to control the 3-C dealer. See page 212.

Now, the foregoing is Richfield's proof concerning the 3-C contracts. Let's compare that with the government's proof, and see what there is, if anything, to support the government's charge in this case.

The Court: Unless you have some specific thought there, I think this is a good stopping point.

Mr. Paradise: Very good, your Honor.

The Court: You have reached a break, and you have had an hour, so we will continue tomorrow.

The Court: All right. Thank you, your Honor.

The Court: All right, gentlemen, tomorrow morning at 10:00 o'clock.

(Whereupon, at 5:00 o'clock p. m., Tuesday, June 5, 1951, an adjournment was taken until 10:00 o'clock a. m., Wednesday, June 6, 1951.)

[fol. 3244] Wednesday, June 6, 1951, 10:00 A.M.

The Court: All right, gentlemen, proceed.

Mr. Paradise: If the court please, in the interest of time, that is, to have sufficient time to cover adequately the problem of the L-O stations, which the court appreciates is the really novel and important phase of this case, I would like to cover the balance of the argument concerning the independent stations rather rapidly.

The Court: All right.

Mr. Paradise: And therefore I would like to omit reference to transcript references to testimony, unless the court asks for the reference to a particular matter.

When we concluded yesterday we had discussed what was the defendant's purpose and what the practices were in connection with the 3-C contracts, and also what the testimony was concerning them. We had stopped at what the Government's proof was concerning the 3-C contracts, to ascertain whether there was any proof of any nature in support of the Government's charges. The Government failed to call any ex-employee of Richfield to testify to any 3-C transaction, excepting solely Mr. Bradford who was the branch manager at Portland.

Mr. Bradford testified he had instructions that 3-C contracts were to be on a 100 per cent basis. And the court will recall that that is perfectly consistent with the con-
[fol. 3245] tracts. Mr. Bradford was Portland's branch manager until the end of 1945. The "entire requirements" contracts were, of course, changed in 1948.
[fol. 3246] No other former employee of Richfield testified to any 3-C transaction.

The government did put on four 3-C witnesses, and I submit the testimony of each of those witnesses is consistent solely with the testimony of Mr. King, and is to the effect that these are not entire requirements contracts since the change of the contracts pursuant to Mr. King's instructions in August of 1948, following your Honor's decision.

Mr. Moore was the first witness. He had an entire requirements contract, but the court should note that even while his entire requirements contract was in effect he handled competitive TBA, and he was a distributor for the U. S. Rubber Company.

You will remember Mr. Moore was from Medford, and the property was leased from Mr. George Field to Richfield, and from Richfield to Mr. Moore. It was not a true 3-C pattern because Mr. Moore knew the underlying property owner, and he would not consent that it be leased to Richfield unless it went back to Mr. Moore at the same time. Mr. Moore did amend the entire requirements contract to a specific quantity contract, as Mr. King had instructed. He didn't want to sign it. There was discussion that he didn't want to make the amendment, and the reason he didn't want to I think is particularly significant. His complaint was that the quantities stated in the amendment were too low, that at the time the amend-

[fol. 3247] ment was presented to him Mr. Moore's average gallonage was about 18,000 gallons per month, and the amendment presented to him called for 12,200. He signed it ultimately as a favor to the salesman, even though he didn't want to, and when he subsequently held the property directly from Mr. Field and not from Richfield and signed a 337 contract, he finally succeeded in having the quantities raised to the quantities that he wanted. I submit that that cannot show the restraint Mr. Dixon talks about.

Mr. Colmery was the second 3-C witness. That was also a most unusual circumstance. That wasn't the true 3-C pattern. Mr. Colmery had two leases at the end of the war from property owners, which required him to build service stations. They were long-term leases. He gave up those leases with the property owners after negotiating with Richfield, and getting Richfield's agreement to build two service stations, one costing $25,000 aproximately, and the other costing $15,000 approximately. Richfield was willing to do that if he would agree to buy his entire requirements through the term of the underlying lease from the property owners. Mr. Colmery would not give up the leases unless Richfield agreed to build these two service stations at its own expense, and to give him a sublease for the full period.

Now, that is the witness that Mr. Dixon referred to as having a 20-year deal. That didn't arise out of Richfield's [fol. 3248] desire. That was the requirement of Mr. Colmery.

Now, it was explained to Mr. Colmery at the time that contract was entered into at the end of the war that Richfield would agree to make this investment, provided he bought his entire requirements. That was the 3-C pattern at that time when an investment was called for, to get entire requirements.

After your Honor's decision, Mr. Colmery was approached pursuant to Mr. King's instructions, and requested to sign a specified quantities contract that would eliminate the exclusive dealing feature. He refused to sign it. He wanted a termination clause. He wanted the right to terminate his sublease at any time on 30 days' notice. In March of this year Richfield agreed to give him the 30-day right of termination.

Mr. Colmery testified he was informed at the time he

signed it, and that he knew that the quantity called for in that contract was 75 per cent of his past average sales. The quantities are in the record and may be compared with his contract, and I won't stop to recite them.

Mr. Dixon made mention in his argument of the fact that the quantity was already written in the contract at the time it was presented to him. I don't see the significance of that. The question in this case is whether this amounted to a lockout of the market, as Mr. Dixon argued, and Mr. Colmery knew that the quantity that he agreed to buy, and [fol. 3249] his sole obligation, was a fixed quantity which did not exceed 75 per cent of his past purchases.

Mr. Colmery also testified, and I would like to call your Honor's attention to it particularly—it appears at page 1109 and 1110—he testified that there was also called to his attention the difference between the old form of sublease and the new form of sublease that was adopted in 1948. That I think is important, because it was stressed by Mr. Dixon that the old form contained a provision in paragraph 3, and I am speaking now of Government's Exhibit 17-C, a provision that the dealer, the 3-C dealer, could not alter the premises or put in additional pumps.

[fol. 3250] That limitation was taken out in 1948 and that was called to Mr. Colmery's attention at the time he signed the amendment, and he so knew it and testified to it. Mr. Strable was the third 3-C, and while Mr. Strable was somewhat incoherent, his testimony was that he knew it was a minimum and maximum contract when he signed the amendment from our "entire requirements" contract. His gallonage at that time was from 5,500 to 6,000 and the amendment called for 4,600 gallons per month.

Mr. Ogburn was the last witness pertaining to the 3-C group, and Mr. Ogburn was not a true 3-C, as Mr. King has testified. As to Mr. Ogburn, we don't know anything about the quantity. That is not in the record, so we have nothing to compare there. But Mr. Ogburn was put on, I think, by the Government to show that he hid competitive lubricating oils. He did testify that he had no agreement with Richfield, written or oral. His arrangement was with the property owner, Mr. Mathis, who was the 3-C dealer. He admitted that he was not told that he was not to handle competitive products. So nothing that that witness testi-

fied to can be of much concern, with one possible exception. He testified that a Mr. Froman called on him and made out this service station Form 205, and that is in evidence, Exhibit 22-G. In that connection and also in connection with Government's Exhibit 30, which are similar forms made by Mr. Dart, and to which Mr. Dixon referred [fol. 3251] yesterday, Mr. King's testimony, I think, is most important.

He said that these men are restroom inspectors. He called them health inspectors. Their only duties are in connection with cleanliness of restrooms. Their duties pertain only to the L-O stations, and even in the L-O stations they have nothing to do with competitive products. He also said if they went into any station other than an L-O it was without his knowledge and contrary to instructions.

The Government offered some written exhibits concerning a fifth 3-C station, the McCracken station. That is Exhibit 28, a letter from Mr. King to Mr. DeMartini, stating that Mr. McCracken wanted to discontinue buying gasoline.

I call your Honor's attention to Exhibits T and U, which consist of Mr. DeMartini's opinion to Mr. King as to the fact that no dealer would be forced to buy from Richfield under any circumstances, and Exhibit U, Mr. DeMartini's letter to Mr. Vandenburg who was Mr. McCracken's attorney.

To summarize, the Government had no employee witnesses or former employees of the defendant. They had four 3-C witnesses who testified consistent with the defendant's position and not for the Government. They did put on some competitor witnesses. The Government put on 25 competitor witnesses. No one of them was a competitor in the gasoline line. Only five of them were lube oil competitors and the rest were TBA or TBA and lube.

[fol. 3252] While these 25 witnesses testified concerning their attempts to sell to 92 separate and identified L-O operators, they did not testify as to their efforts to sell to a single particularized 337 dealer station. And they only testified to three 3-C stations during the entire testimony.

Mr. Ellis talked about trying to sell Mr. Colmery at a time when Mr. Ellis was the assiduous Pennzoil salesman, and his testimony relates only to the time when Mr. Colmery was

on an "entire requirements" contract, and then Mr. Colmery would amend the contract at his own insistence on a cancellation privilege. So that testimony, I think, is unimportant.

Mr. Turner of the Christensen Oil Company testified to a station operated by Mrs. Johnson. That is not a pattern 3-C. Mrs. Johnson had no contract with Richfield. Richfield's contracts were with Mr. Smith who owned the property. Mr. Turner's testimony was meaningless because Mrs. Johnson gave no reason to Mr. Turner for not buying oil from him.

Mr. Ogburn: There was a Mr. Cleveland who testified about the Ogburn station, merely said that Mr. Ogburn would not display Mr. Cleveland's products.

In summary of these 3-C's, that is all the testimony submitted to the court that the Government has put in on the 3-C stations. There is a complete failure of proof. This is not a question of conflict of evidence. There is no re-[fol. 3253] straint shown, certainly no pattern of restraint. There is no showing of any threats, any oral agreements, no showing of any cancellation of agreement, no showing of any control.

And mind you, these are all matters of explicit allegation in the Government's complaint. No showing that the competitors could not sell and, as a matter of fact, the testimony is exactly contrary. The testimony is that over 75 per cent of all the 3-C stations do handle competitive lube oil, competitive grease, competitive TBA.

I think that the 3-C contracts, to wind this phase of it up, is the only portion in this case which could possibly have any relationship to your Honor's decision in the Standard Oil Company case, and that would be true if these 3-C contracts contained today, as they did prior to 1948, a provision as to "entire requirements."

The record shows that following your Honor's decision Richfield made a determined effort to comply with the law as your Honor declared it in that case. Other than that phase, the Standard decision has no bearing in this case. Even then, if it did, there would be the problem of substantiability, because if we looked at the numbers of 3-C contracts and the volume involved, they are so small as to be insignificant.

More importantly, however, the discontinuance of the practice in August 1948, on the advice that contracts of that [fol. 3254] sort might be illegal, is a sufficient showing that no injunction of any nature would be warranted as to the 3-C type.

Now, as to the 337 stations, we also have a stipulation with the Government as to the nature of the 337 dealers. It is stipulated on page 5 of Defendant's Exhibit A: The dealer either owns the service station or leases the service station from a lessor other than the defendant.

Mr. King testified that these were the people to whom he referred as "independent dealers." They are Richfield's customers. Richfield competes for their business in competition with the severe competition of its competitors.

On some occasions Richfield is required to extend to them additional inducements in order to get their business. That was the extra margin letter, Exhibit R, which Mr. King testified is not used with the L-O operators.

The nature of the 337 deal consists of the 337 sales contract and, in some instances, the painting agreement.

The 337 sales contracts, if the court will refer to the forms attached to Defendant's Exhibit A, have always been specified quantity contracts. They have never been that entire requirement contract.

The only change in the successive forms occurred between—that is to say, the only material change in the form of the sales contract itself, as distinguished from the painting agreement, occurred in 1948. I am referring to [fol. 3255] Government's Exhibit 5-D, where the termination privilege was changed to permit termination by either the dealer or Richfield on 30 days notice in writing.

Prior to that time, the court will recall that the contract was written for a specified term, but Richfield alone had the right of termination on five days notice. This made the contract readily terminable both by Richfield and by the dealer, and we submit that within the law of the cases as to the reasonableness of the term, the American Can case and others cited in our memorandum, that there could be no problem as to that contract, certainly under the Sherman Act.

As to the nature of the dealer's obligation under the 337 contract, Mr. King testified that it is limited to the buying

of a specified quantity under the column "Minimum". He gave instructions as to this form of contract in the fall of 1948 similar to his instructions concerning the 3-C sales contract on Form 783, I think it is.

He also gave his reasons for his instructions. His instructions were that the salesmen—it is the salesman who contacts the 337 dealers, the same as the 3-C—the salesman was not to permit the dealer to agree to buy a quantity of gasoline computed in excess of 85 per cent of his average monthly purchases in the prior yearly period. [fol. 3256] Where there was a new station, they would make an estimate on it and the instructions were limited to 85 per cent of the maximum. That was reduced to 75 per cent.

In discussing the 3-C stations I commented on Defendant's Exhibit Y, which is a compilation of the quantities. It is a compilation which divides into four different groups the 3-C and 337 contracts and their categories in relationship to the ratio by which the man's obligation to buy gasoline bears to his past experience. I won't repeat that discussion here. It is equally applicable to the 337 contracts.

It is important to note that that compilation shows how meticulously Mr. King's instructions were observed, the instructions given in the fall of 1948.

Prior to 1948, Mr. King mentioned that the pattern was that the salesman negotiated with the dealer on a quantity basis mutually satisfactory to both. There were no instructions limiting the quantity to an amount less than his past experience. It was whatever the salesman and dealer agreed upon.

Mr. King did testify that Richfield has never contracted, however, on the basis of "entire requirements" of the 337 dealer. He said that when Richfield wanted the dealer to buy its entire requirements, as in the 3-C contract, that Richfield's form so specified on its face.

Mr. King also testified as to instructions against any [fol. 3257] oral contracts and referred to the defendant's chart of authorized signatures. Only the written contracts on forms which had been prepared and approved by the legal department were permitted, and those were permitted to be signed within the divisions only if they were signed without any deviation or change whatsoever.

As to the buying habits of these 337 dealers, both before and after this change of form in 1948 put it on a 30-day mutually terminable basis, Mr. King testified here, again, that 75 per cent of all of the 337 stations handled competitive oils, greases, and TBA, and also that the same percentage as a minimum shown and displayed competitive signs.

I think this is the part which must be the complete and final answer to Mr. Dixon's suggestion to the court that there has been a lock-out of a market, and that the pattern insofar as the independent stations is that competitors are locked out.

There is no proof of that in this record, your Honor, and the proof is entirely to the contrary. Mr. King testified that it is true, that, while these dealers want their 337 contracts to remain in effect, they do buy all of their gasoline. He testified that no 337 dealer since 1940 or '41, I think he said, has wanted to go so-called split pump, has wanted to put in a competitive gasoline and, at the same time, to handle Richfield's gasoline. He said when they wanted [fol. 3258] to leave us, they left us lock, stock and barrel. We were out completely.

He testified that many dealers had abrogated their contracts and completely discontinued buying gasoline from Richfield entirely.

[fol. 3259] A compilation which I think is of particular importance in this regard, your Honor, is Defendant's Exhibit X. That is a compilation which shows the number of these 337 accounts which were lost during the period from 1946 to 1950, according to the defendant's own records, and it is a breakdown of the accounts lost between those that were lost by failure to renew at the expiration, and those that were lost during the term of the contract, where the dealer discontinued.

Your Honor will notice the ratio of those lost prior to the expiration, which were 107, compared to 407, where the dealer discontinued buying before the end of his contract. And in the case of the dealer's discontinuance of his purchasing before the end of the contract—and this I think is the most critical thing—at the rate of 3 to 1 the dealers had painting agreements. In other words, three times as many dealers who discontinued buying prior to the expira-

tion of their contract had painting agreements with their sales contract as opposed to the number who discontinued without the painting agreements. The exact numbers were 303 of these accounts lost prior to expiration with painting agreements, and 104 lost without.

There can be only one valid inference from that, and that is that the execution of the painting agreement has no compelling effect upon the 337 dealer to continue purchasing, as has been suggested constantly by the government throughout this case.

[fol. 3260] Now, the painting agreement has been discussed at some considerable length. Mr. King testified as to the reason for the painting agreement. He testified first that Richfield paints the stations of its dealers because it is a competitive practice in the industry. As the oil companies, competitor oil companies, paint these stations, the dealers expect their stations to be painted without charge. That is the standard practice. They will not do business with any oil company furnishing gasoline unless the company agrees to paint the station without cost, and Richfield, if it is to continue to stay in this market and wage competition and compete for their business must paint the station.

Now, Mr. King also testified as to the reason for making a painting agreement. He testified that the reason is that the dealer gets a free paint job, and that the dealer has a right to terminate his contract, and he terminates his contract whether he has a right to or not, and Richfield's reason for having a painting agreement is to have the dealer have an obligation to repay Richfield that cost in the event that the dealer does not buy the specified quantity which he has agreed to buy.

There is no ground, no room for any inference from any testimony in this case that the dealer would have any obligation to pay the painting cost if he failed to buy his entire [fol. 3261] requirements. The evidence is precisely to the contrary.

Government's Exhibit 26-A is important in this case. On page 28 there is a compilation—and this is the government's exhibit, based on a compilation furnished by the defendant, and it was agreed that all the facts are stipulated to be true by the stipulation which is Defendant's Exhibit

L, which is the stipulation covering this—page 28 of Government's Exihibt 26-A shows the number of sale contracts, the total number of 337 sales contracts, and then it breaks that total number down into three separate components.

The first column is the number of 337 sales contracts made without any painting contract whatsoever. The second is the 337 sales contracts made with an accompanying painting agreement, and the third is the 337 sales contracts where there was no painting agreement made at the time the sales contract was made, but the painting agreement was subsequently made, and that compilation goes from 1950 all the way back to 1938.

It must be apparent from that that there is no requirement, as Mr. King testified, by Richfield that it must paint a dealer's station as a condition to Richfield selling it gasoline and, certainly, no requirement that a dealer must enter into a painting agreement before Richfield will sell a dealer gasoline.

If the government charges the painting agreement is withheld, and that we won't sell gasoline unless he will sign [fol. 3262] the painting agreement, there is no basis for any inference of that sort. On the contrary, it is the dealer who demands the painting, and the painting agreement is given and required by Richfield solely to collect its painting cost if the dealer runs out on the contract and refuses to purchase the specified quantity, which is his obligation.

Now, as to the collection under the painting agreement, Mr. King testified, and there is no conflict as to this evidence, that Richfield has never collected on a painting agreement except in the sole circumstance where the dealer has completely discontinued Richfield products. It has never collected on the painting agreement where the dealer continued buying gasoline and handled competitive lube oils or TBA. He said it has never collected or attempted to collect under the painting agreement where the dealer handled some Richfield gasoline and wanted to handle in one of his pumps another gasoline. He said that situation has not arisen, that it has not arisen in the past 10 years, that dealers prefer to deal with one supplier, and they do it voluntarily, of their own volition.

The government has charged that, in addition to the sales contract and the painting agreement, where it is used, that

there is also an oral agreement. Mr. King testified that the sales contract and the painting agreement, where it is used, constitute the entire agreement, and I submit that [fol. 3263] there is nothing in the entire record which suggests any difference whatsoever from Mr. King's testimony.

As to the termination of 337 contracts, Mr. King did testify that there has been termination. Now, I am not talking——

The Court: There is one point I want to bring up for discussion at this time. I don't think Mr. Dixon mentioned it in his argument, but it is whether the painting agreement, tied to the sales contract,—wait a minute. I want to look at my notes of last night. I put it down here when you were arguing.—whether the painting agreement and the tie-in to the sales contract, regardless of any consequence, and, remember, we are dealing here with a complaint under both the Sherman and the Clayton Acts. Under the Sherman Act the practices must result in a restraint. Under the Clayton Act, as I myself have said repeatedly following the decision of the Supreme Court, it is not necessary that the contract have that result. The Clayton Act takes the contracts in their incipiency, and if they have a tendency, a reasonable tendency, to result in a restraint on commerce, then they are objectionable, regardless of whether there is evidence that they had that effect. That is a matter which we should consider, especially in conjunction with those, and, that is, can it not be said that with the way the contract was worded and the way the delivery of these petroleum products was tied to the painting con- [fol. 3264] tract, which exhibited the colors of Richfield and forbade the use of signs of any other products, and granting all you say, that they never foreclosed anybody, never forfeited a contract for buying some petroleum products other than gasoline, or TBA products, whether regardless of the actual result, the natural tendency of the tie-in would not be that. It is inconceivable that a man had tied himself to a contract which obligated him to take petroleum products in certain quantities, and then having had an expenditure incurred by the company, whereby he carried the colors of the company, which is notice to the world that he was selling these products, and whether that would not in reality be such a direct pressure that the man was not

likely to jeopardize the contract by any free dealing with any other suppliers as to any of the products.

Mr. Paradise: I am grateful to your Honor for bringing that up because I think it permits us to orient this particular problem. I don't think this problem can arise under the Clayton Act at all.

Laying to one side for the moment the fact that there were not painting agreements with all sales agreements, but only with a portion of them, as I pointed out in Government's Exhibit 26-A, this problem can arise under the Clayton Act only if the sales contract had been used with the old form of 3-C requirements contract. This problem cannot arise under the Clayton Act, but only under the Sher-
[fol. 3265] man Act.

Your Honor mentioned that the Clayton Act is designed to meet these things at their incipiency, and I am sure your Honor refers to the qualifying clause, to where the effect may be so-and-so and substantially lessen competition, and so on.

The Court: That is right.

Mr. Paradise: However, if this 337 sales contract were accompanied with a painting agreement, it does not qualify under the first portion of Section 3 of the Clayton Act. This is not a contract where the man buys only Richfield products and agrees, directly or indirectly, not to buy somebody else's product. This is a contract to buy a specific quantity. In answer to your Honor's question, while Mr. King was on the stand, I think he delineated the provisions of the painting agreement and the sales contract. He pointed out that Richfield has no right to collect under this painting agreement if the dealer buys the quantity he agrees to buy, regardless of where he buys the balance, and Richfield has never attempted so to do, and there is no such testimony.

The Court: There is a possibility that that quantity which is provided for may so adequately cover it, regardless of the percentage. I think the evidence was it was based on 70 or 80 per cent——

[fol. 3266] Mr. Paradise: The instructions were that 85 per cent be a top limit, and then 75 per cent.

The Court: But it may be fixed at an average so high

there would be no possibility for any purchase, and that would become merely a gesture.

Now, remember my custom. I am asking questions, and I may talk myself out of it. I had a very unusual experience. It has happened to me many times before, and I have told persons that I have actually started to write an opinion one way, and then turned it the other way. When I told that recently to some lawyers, they asked me about the specific case, a rather important case, where the Court of Appeals adopted my opinion. It is a leading case on the subject of trade-marks, Brooks Brothers v. Brooks Clothing Company, and they said the first portion of the opinion read so that I could turn it either way. I said I probably did that because I didn't know which way I was going to turn myself, until I had worked it out.

So I must tell counsel not to take any vested interest in what I say. I started to say that in the last two weeks I had an unusual experience. I have had some very important matters arise on Mondays. That is why on Tuesday my time is so broken up, because I try to keep up with them. We have had a terrible day this last Monday. We were here from 10:00 o'clock in the morning and were still here until 5:30, and worked through the noon hour. [fol. 3267] But I have had some very interesting questions arise. In addition to a question of the constitutionality of the Patman Act on which I had to write an opinion, I have had two cases where I raised certain particular questions, and then had to write opinions talking myself out of the question that I myself had raised.

In other words, to use an expression that is used today, so far as my mind is concerned, it is rather fluid. I hope it will always remain so as long as I am a judge and until I retire for old age. So I do not want you to feel that I have any definite opinion at the present time as to the question about which I asked. But it seems to me that that question should properly be raised because a restraint may exist by indirection, and the court has found restraint way back. A lot of people assume that the recent cases are different from the old ones. What happened was that this law was allowed to remain, to use the expression of a famous president, in an innocuous

desuetude for many, many years by many administrations, including the administration which had attacked the law. Then when it was revived, it developed that many, many years had passed, during which the law could have been developed, and matters decided by the higher court, which were not developed, but going back to the pre-New Deal cases, you will find the Hardwood case, in which Chief Justice Taft wrote the opinion, and the like. They held that [fol. 3268] restraint may lie behind the most innocuous doings, and that, for instance, what they call just the manner of exchange of information may develop by what follows to have been really a command that certain things be done, and in the rigged-up bidding cases the same situation developed. So I say we have to take those situations into consideration, and test that by that criterion too, in order to determine whether behind what seems to be an innocuous looking contract for the purchase of a minimum supply and a contract to have somebody paint your station at his cost, so long as you fly his colors, in reality we did have a shut-out of any possible competition because you have taken care of all of his needs regardless of whether you say so or not, and that you have acquired through the painting agreement a method of penalizing him, if he departed from the rules and advertised other products and put signs on the painted portion of the station.

Mr. Paradise: Now, these are the points that I wanted to mention in that respect, your Honor. One is the recognition that your Honor gave in the Standard Oil decision, that a specific quantity contract cannot lock out competition. The government is speaking of a lockout of this market.

Now, let us assume that there are two problems. One, what could occur under the contract, and, two, what has occurred.

What is the evidence in this case as to whether there has been even the lockout that the government charges in this case? There is no evidence of any lockout. Let us [fol. 3269] take the past experience as to lubricating oils, grease, and TBA. There is testimony that notwithstanding the contract, and notwithstanding the paint agreement, 75 per cent of them at least carry competitive stuff, and 75 per cent of them advertise it.

As to the gasoline, and this, I think, is most significant, the government put on 25 competitor witnesses, and not one of them was a seller of gasoline.

The last case on the Sherman Act said whether reasonable or unreasonable under the Sherman Act depends on whether there has been a deprivation of competitors of reasonable opportunities to sell.

If there had been a lockout as to gasoline, I submit that the government might have put in at least one competitor witness as to gasoline, and that is the only thing that Mr. King testified that the man continues to buy all of, so long as he buys. But he doesn't buy it throughout the term of his contract.

We have testimony as to a number of instances where they terminated and stopped buying, regardless of the duration of the sales contract, and with or without a painting agreement.

I think that same matter was recognized, your Honor, in Mr. Justice Frankfurter's opinion in the Standard case, [fol. 3270] and, similarly, in the Sinclair Refining Company case, this question of practical effect.

The dealer can handle other gasoline if he wants to, and can put in as many additional pumps as he wants to.

Now, Mr. King testified there has never been a termination for failure to buy the agreed quantity, failure to buy grease or competitive products, whether there has been a posting of signs, and so on.

Before we leave the subject-matter of the painting agreements, I think your Honor's attention should be called to the provisions of the painting agreement, which permit Richfield to collect under the painting agreement. The form currently in use, and which has been in use since 1948, is government's Exhibit 5-F, and the circumstances when the dealer must pay are contained in paragraph 3. He pays in the event of his failure to buy the agreed quantity, or in the event that he terminates before the end of the specified term of the contract. He does not have to pay if Richfield terminates for any reason other than his default.

On the matter of whether signs could be placed on the station, and the significance of the provision concerning

signs, I suggest your Honor compare paragraph 1 of Government's Exhibit 5-C, the old form of painting agreement in use before 1948, with paragraph 1 of Government's Exhibit 5-F, which shows, as I think your Honor asked Mr. King, that the reason for the provision against signs [fol. 3271] is so that—first, that the signs only pertain to those on the painted surfaces, not to these curb signs or other competitive signs that are scattered all over these independent stations, and, second, that the reason for the provision against removal of signs was to prevent interference with Richfield's obligation to paint the station, and that has been true ever since 1948.

I would like to spend just a couple of moments on this matter of the split-pump problem. The government offered a split-pump letter by Mr. Dinkins, written in 1938. That letter is 13 years old. We objected to its admission on the ground that it had no present relevance, and that it had not been tied in. Mr. King testified that pursuant to that letter Richfield withdrew from some 40 to 50 accounts back in 1938. He said that there was no public announcement made to the trade at that time, no publicity was given to it. That I think is important, your Honor, in view of the decision in the Carter Carburetor case, cited on pages 20 and 22 of our opening memorandum. The vice in the Carter case was an announcement to the trade by the Carter Carburetor Company, generally publicized, that they wouldn't sell their carburetors to any service station who handled competitive products. Richfield did not do that. There is no showing of any sort whatever.

Mr. King testified that these instructions of 1938 became [fol. 3272] meaningless. He admitted that there was no short memorandum rescinding them. He admitted there was no affirmative memorandum rescinding them, but your Honor recognized it, because you said in the transcript on page 203 that an abandonment of these instructions could occur either negatively or positively. And Mr. King testified these instructions became meaningless, and he testified why they became meaningless, that the buying habits of the public were reflected in the buying habits of the dealer, that the motorist preferred buying at a station which handled one supplier's brand of gasoline,

and that, therefore, the dealer prefers to handle one supplier's brand of gasoline with or without compulsion, and in our case without compulsion, and speaking of the independent dealers, the dealer is not permitted to agree to bind himself to anything approaching his requirements.

Mr. King testified that Richfield does not solicit the business of particular dealers operating certain split-pump stations.

That is a matter of non-solicitation, if your Honor please. He does not go out and try to obtain that particular business, and he gave the reason why, that they were disreputable stations, the quantity was low, and they did not observe Richfield's fair trade price schedules. He testified that Richfield does not solicit their business on the basis of any agreement or understanding that the dealer buy all of his requirements from Richfield.

[fol. 3273] The Government's evidence as to the 337's is almost non-existent. They had some evidence concerning 3-C stations which was consistent, as I pointed out, with Richfield's position, but as to the 337 stations there is no testimony whatsoever except in the respects that I shall mention.

There was no testimony in support of the charge that there is an oral agreement in every case as to exclusive dealing, or that there was a threat of cancellation of sales contracts.

Those are contained in paragraphs 19 and 20 of the complaint.

There is no evidence in support of the allegation of inspecting and policing and supervision of the activities under paragraph 20.

There is no evidence in support of the allegation of 20 that in instances too numerous to be mentioned Richfield has cancelled sales contracts of dealers who refused to conform to these alleged oral agreements.

Paragraph 21 alleges that Richfield prevented the competition of these competitive suppliers. But there is no competitive supplier who testified about it, that he was unable to sell.

The Court: Pardon me. Go ahead.

Mr. Paradise: The only 337 dealer who was called was

[fol. 3274] Mr. McRae. And I am not sure that Mr. McRae was a 337 dealer at the time he testified that he tried to put in a pump of Standard gasoline and was told that he could not. That occurred back in 1942. Mr. McRae was not a 337 dealer first and then an L-O operator, as Mr. Dixon mentioned in his opening argument. Mr. McRae was first a lessee from Richfield at an L-O station, and he succeeded in going behind Richfield's back to the land owner and getting the underlying lease, so that on expiration of Richfield's lease Mr. McRae controlled the station. So then Richfield had a 337 contract with him.

Mr. McRae's testimony as to whether or not he be permitted to handle Star ·d gasoline, he said, was within 30 days after his lease .d I can't tell whether that was under his 337 basis or his L-O basis.

But more importantly, Mr. McRae was a most antagonistic and biased witness. He felt very badly toward Richfield due to some lawsuit when he went into the Navy.

Your Honor, there are 1,361 stations in this category under the 337 type of contract. That is in Defendant's Exhibit M-4. Out of that total number the Government was able to produce one witness, and he testified to an event that occurred in 1942, nine years ago.

The Government did offer testimony on the split pump proposition. They put in the 1938 letter. They put in the 1938 letter of Mr. Dinkins about pulling out of split pump [fol. 3275] accounts.

In Mr. Dixon's opening argument he made this statement on page 2099, from which I take it there is an inference that Mr. King is reputed to have testified that Richfield's policy against split pumps has continued to this time. Mr. Dixon stated—and this is on page 2099:

> "Of course, after that it was switched over, as your Honor knows, to a maximum, minimum arrangement, but the testimony of Mr. King in that respect is that from the time they started the no-split-pump policy back in 1938, after Government's Exhibit 9 was circulated, I mean that policy was made known, that the effect of all of these sales contracts has been that, regardless of the maximum-minimum provision, they have been 100 per cent Richfield petroleum products."

I submit that Mr. Dixon's statement in that regard was mistaken.

Mr. King's testimony appears on page 1873-1875, and that is in volume 13. He was asked the question:

> "It is a fact, is it not, Mr. King, that regardless of the provisions of paragraph 1 of Exhibit 5-D and paragraph 1 of Exhibit 5-G, that the dealer or purchaser of petroleum products, of gasoline, did in fact, while contracts of that type were in effect between the dealer and Richfield purchase his entire requirements of gaso- [fol. 3276] line from Richfield?"

Mr. King's answer was:

> "It has been our experience that while these contracts have been in effect that the dealer has purchased his entire requirements, though there are numerous instances where he has cancelled the agreement or otherwise abrogated it by ceasing the purchase entirely of our products."

In answer to the court's question—the court raised the question as to whether in those circumstances the dealer is obligated to pay for the cost of the painting, and Mr. King testified:

> "No, your Honor, that is not correct. In the first place he has, on the one hand,"—

I will paraphrase this—he has an obligation to purchase a specified quantity. And on 1875, he said:

> "And as long as he continues to purchase the quantity of gasoline as specified in the sales contract, even though he sold other gasoline, we would have no right to effect collection under the paint contract."

He said:

> "The only time we have ever effected collection under the paint contract is where he has stopped buy- [fol. 3277] ing entirely, and we are out of the station."

Mr. Bradford testified as to split pump policy in 1937 somewhere in Idaho. He recognized, however, a difference between L-O's—he did not testify to any split pump problem subsequent to 1937. He recognized the difference between L-O's and independents. He said, on page 85:

> "You don't tell those fellows to get rid of anything. You have to sell them."

He talked about the painting agreements and the effect of the painting agreements. Mr. Bradford was the Portland branch manager who testified about having the dealers take down their signs. He testified he did not ask them to take down their signs, but when he went around the station making up his painting requisition, the dealer went around in front of him in taking down the signs. That was not a new account. That was not solicitation of new business. Mr. Bradford testified that that was when he was putting a new paint job on an existing account and that he had that picture taken for the purpose of getting a painting requisition approved in his home office, and the moment the picture was taken, the sign went back up. And furthermore, that even when the signs were down, that did not take competitive products out of the station, and we are talking about the independent stations, of course.

Mr. Nicholson testified as to split pump. He had instruc-[fol. 3278] tions in 1937 or in 1938 against the split pump accounts in Seattle. He said he thinks it was the policy of Richfield to sell gasoline 100 per cent. He thinks maybe, perhaps, Mr. King and I may have discussed about our policy.

Mr. Nicholson has not been with Richfield since 1945. This testimony related to around 1937 and 1938.

Your Honor mentioned that Mr. Nicholson, himself, was so hazy in his recollection that counsel had to direct his attention by leading questions.

Mr. Duarte had a somewhat warped view of the painting arrangement. He called it a "painting lease." He did not recognize the instrument, he was not too sure of it. He admitted that the dealers handled competitive oils and TBA, and that Richfield could not stop them from it.

None of the Government's witnesses have testified to anything subsequent to 1946, and most of them around 1938 to 1941. And there has been only one 337 witness and that was in 1942, Mr. McRae.

No Government witness testified to any threat of cancellation of a sales contract. Of the total number of the Government's competitor witnesses, 25 of them, not one of them testified as to gasoline, and no one of them testified as to failure to sell any particular identifiable 337 station.

Under these circumstances I think the statement in the General Electric case, which is in 82 Fed. Supp., is par-
[fol. 3279] ticularly appropriate.

The Government's offer of proof is not impressive. I think the only part of the law that is applicable to this phase of the case is United States versus United States Gypsum Co., which is in 334 U. S. 364, where the Supreme Court reversed a finding of fact on a showing that was stronger than the Government's showing in this case, and stated that it reversed it because the finding was clearly erroneous under Rule 52(a).

We submit that insofar as the independent stations are concerned there is no proof whatsoever.

Would the court care to take a recess before we start on the L-O stations?

The Court: If you have reached a stopping point.

Mr. Paradise: I have reached a conclusion on the independents.

The Court: We will do that. I wanted to call attention to a statement. I had difficulty in finding it because I scatter my books all over the place, and I can go to them and find them but when I send somebody to find them I have got to describe what I want unless I identify it by volume.

In arguing about these cases we have to bear in mind the aim of the statute, and I think one of the best statements of the aim of the statute is in the last decision upon the subject by the Supreme Court. It is in Standard Oil
[fol. 3280] Co. v. Trade Commission, decided on January 8, 1951. Incidentally, that case was in that court for over a year. It was argued originally on January 9, 1950, then they could not make up their minds so they re-argued it in October, and finally decided it a year later. But this

is made by Mr. Justice Burton, who, as you remember, was a senator from Ohio for many years and was familiar with legislative history dealing with the antitrust acts. I think he was in the Senate when the Robinson-Patman Act was enacted. But this is a very brief statement. I am reading from page 248. This is the official volume 340. He said:

> "The heart of our national economic policy long has been faith in the value of competition. In the Sherman and Clayton Acts, as well as in the Robinson-Patman Act, 'Congress was dealing with competition, which it sought to protect, and monopoly, which it sought to prevent.'"

I think that must be constantly borne in mind when you consider these matters. That is why I have said in these cases and in other cases that whether a particular trade practice is good or bad, has good or bad economic effects upon the participants, or even on the public, is no concern of ours. All we have to determine is whether it is one of the practices forbidden by any of these three Acts, and [fol. 3281] if you find it, then that is all you are concerned with.

I try to bring this before us because there is a tendency throughout the entire country to feel that a case like this should turn into a question of policy. I have never allowed any case in front of me to turn into policy, because I have kept and I have tried more of them than anybody on the Pacific Coast—I think Mr. Dixon will verify that, both civil and criminal—I have tried to keep that constantly before me and, if you do not do it, you get lost.

I was reading one of the series of articles appearing in the Christian Science Monitor dealing with the Investment Bankers case, and I noticed something that made me smile. It seems that after months of argument, the judge trying the case made the statement, finally, that he agreed with the Government contention that whether this policy of restrictive bidding is good or bad for the investment banker has nothing to do with the case, and this financial writer thought it was a surprising admission. If he had been around this court, he would have known

that in the Standard and in every other case we try, because of the long familiarity of this branch of the law, we lay that down as the policy and do not allow anybody to deviate from it.

This is not criticism of either of the lawyers. There are some men of distinguished reputation. I met some of them there, Mr. Arthur Dean and some of the other men who are in that very case. But I think we are getting away [fol. 3282] from it. I think that is responsible for a lot of the propaganda that is going on in the newspapers through the advertising columns by some of the persons involved in these cases like the A & P case, spending millions of dollars. Even I get some of them through the mail. I got a sheaf that were printed that day, going on about the policy of the Government behind it.

That is a nice type of argument to make in front of a Congressional Committee which is discussing any possible modification of the law. It is no argument to advert to in a courtroom, either in one argument or another. And I am very happy to see that counsel in this case have not done it.

All right, we will have a short recess.

(Short recess)

[fol. 3283] The Court: All right, Mr. Paradise.

Mr. Paradise: We come now, your Honor, to the L-O stations, and this is the important and new phase of this law suit. The problem here is entirely different than the problem regarding independent stations, of course, both, in fact, as a relationship, but, more importantly, here I think the government and Richfield are in substantial agreement as to what the facts are, and here the problem is primarily a question of law.

The law involved, however, is Section 1 of the Sherman Act, pertaining to restraints, and Section 3 of the Clayton Act. There is no problem of monopoly, or intent to monopolize, or attempt to monopolize, or purpose to monopolize. None of those are charged in the complaint. Those are not in issue in this case.

The significance of the relationship between Richfield and the L-O operators is summed up on pages 36 and 37 of the defendant's original memorandum.

Before discussing the legal significance of the relation-

ship, I would like to state a summary of the salient factors pertaining to the L-O stations, what is Richfield's purpose in having them, and the nature of the relationship.

Now, first, as to what is an L-O station. There are four different kinds of L-O stations. Mr. Brower described them, and the four different types are outlined on Defendant's [fol. 3284] Exhibit W. They include four different categories: fee properties, where both the land and the facilities are owned by Richfield; where Richfield owns the facilities which it has installed on land which it has leased, and that is category B; category C is where lessors have built stations for Richfield under a long-term lease, and where the station is built to Richfield's plans and specifications; and category D is other stations that have been built by lessors, but not to Richfield's specifications, and on land leased by Richfield.

Defendant's Exhibit W, I feel, is quite important. It shows that of the entire 1343 L-O stations that Richfield has as of December 31, 1950, over 81 per cent of those stations were what is called on the exhibit "self-created stations." And "self-created" is defined in the exhibit in this fashion:

> "This phrase refers to those stations built by Richfield or by the property owner under agreement with Richfield on sites which had never theretofore been used or equipped as a service station handling any petroleum products."

Mr. King testified, and this is unchallenged, that in no L-O station does any operator own any of the land, buildings, tanks, pumps, or fixed assets of any nature, or anything except service station tools and his inventory of petroleum [fol. 3285] products and TBA.

Some question was raised as to the hoist that was installed by Mr. DeLonge at his station up in Reedville, or somewhere in Oregon, and we will get to that later.

The relationship between Richfield and the L-O operator is a combination of various factors, and I say this at the outset, that Richfield's contentions with respect to the L-O operators are not predicated on ownership as the sole or primary factor.

I believe your Honor in the Standard Oil Company case rejected the idea that a contract otherwise in violation of

Section 3 of the Clayton Act would be immune from the Clayton Act if it was contained in the sublease by Standard. Your Honor wrote a paragraph on that subject in the opinion.

The Court: It is surprising how many things there are in that opinion.

Mr. Paradise: However, that I want to point out.

The Court: One thing about it, I wrote it myself. I have no ghost writer. Furthermore, I do not even have a research clerk, so whatever I do I cannot blame on somebody else. If it is good, I am entitled to credit. If not, why, criticism is to be directed to me. I have no vicarious animal or person on whom I can throw responsibility.

Mr. Paradise: I give your Honor credit for that statement in the Standard case, and my criticism is directed to the [fol. 3286] government's attempt to apply it to our case.

The Court: I see. All right.

Mr. Paradise: In our case this requirement of exclusive dealing is not predicated, and our contention is not predicated upon the fact that we own the property. Ownership of this property, either by way of fee ownership or lease, is not the end-all. It is only one of a bundle of contributing factors that make up this relationship.

What else goes into this relationship? Well, it includes the manner in which these operators are selected, where they are selected from, who they have been with before, whether they have been operators, whether they have been independent dealers before, or whether, as the evidence shows, they, by and large and by the great majority, they have not been so. That they have not been taken off the market, that is the important thing under the Curtis Publishing Company case. We select them by virtue of certain qualities. The testimony, as you are aware, as we get into that, shows that particular qualities are searched for when these men are interviewed, and these qualities are matters of reputation, of integrity, and family, and things of that sort, matters far different from a relationship as between a seller and a customer, if these men be compared with the independent dealer to show in reality the difference between them. These men, by and large, sign employment applications. Not that they [fol. 3287] are employees, but they state their qualifications

and give character references. Those are not earmarks of a purchaser and seller relationship, as the government would have the court believe. These men are told and instructed that before they can occupy this station they must comply with a multitude of things pertaining to operation, including, of course, the requirement that they handle nothing but Richfield products. There is testimony of other factors, including the training and constant supervision and control over them, and Richfield's purpose in having the stations operated in a particular manner, not as a landlord, but because Richfield is a marketer of petroleum products, and indirectly of tires, batteries, and accessories, although it does not manufacture them. All of these things will be developed, and they are all pertinent to the overall problem of the relationship, and the fact that, in view of that relationship, this relationship is not cognizable under either the Sherman or the Clayton Acts.

Now, taking up these factors one by one, first, what is Richfield's purpose in having these L-O stations?

Mr. King testified as to the basic underlying purpose. Richfield cannot depend, he said, on a sufficient volume of business from independent dealers to maintain a stable market. Richfield is constantly competing against other petroleum marketers for the business of those independent dealers, but it is also constantly losing accounts of inde-
[fol. 3288] pendent dealers, and that is in the testimony, as well as in the exhibits.

Richfield's primary purpose, therefore, has been to create an outlet for its products. It cannot find enough independent dealers to do business with for this purpose. Mr. King testified that the need for this outlet has greatly increased in the postwar period, due to four separate and distinct factors. One was the enlarged refinery facilities which were constructed during the war. The court will recall the testimony and evidence pertaining to the fact that this was done at the request of the government. Richfield's refinery capacity for the manufacture of motor gasoline prior to the war was increased during the war by these new facilities to the point that when these new facilities had been completed, at a cost of some eighteen to twenty millions of dollars, Richfield's capacity for the manufacture of motor gasoline had been increased by 32½ per cent.

The second factor was the discontinuance by the government at the expiration of World War II,—not the complete discontinuance, but the very radical cut-down in purchases. Mr. Day stated that the quantity of gasoline that was taken that was being currently manufactured by Richfield was chopped down the day after V-J-Day from 17,000 barrels a day to two to three thousand barrels a day. Taking the difference between 17,000 and 3,000 we have 14,000 barrels per day of discontinued purchases. That 14,000 barrels per day, I call to your Honor's attention, is 17½ million gallons [fol. 3289] per month, and that is the volume that would require more than 2,000 L-O units at that time to sell per month.

Your Honor will recall Mr. King's testimony that the average gallonage in an L-O unit at that time was 6800 gallons per month, and that it has been increased by 60 per cent to the end of 1950, the general average throughout the country.

The third reason was the discovery by Richfield of new oil fields, which provided, of course, more crude oil to be refined. The fourth reason was—by the way, while we are on the subject of the discovery of new oil fields, that must be borne in mind in connection with Mr. David Day's testimony, that subsequent to the end of the war the refinery capacity was again increased by removing bottlenecks from 43,000 barrels per day to about 48,000,—I think either 47 or 48.

The fourth factor given by Mr. King is the increased need by Richfield for outlets, is the increase in the demand for petroleum products due to the increase in population, and he testified that sales generally in 1950 were 60 per cent in excess of the sales in 1941.

I call the court's attention to the defendant's exhibit M-13, which gives statistical data concerning the increase in population and the increase in motor vehicle registration. All of these matters show that the purpose of having, creating, [fol. 3290] and operating L-O stations indirectly through these operators provides a good business purpose, a valid business purpose. The matter of having L-O stations is, in the words of Mr. Justice Jackson, I believe it was, a device to wage competition, not a device to suppress competition.

Mr. Dixon, in his opening argument, in referring to the

L-O stations, refers to this as a monopoly, and that these are monopolistic practices. Setting aside for one moment the fact that Section 2 of the Act is not involved, and using "monopoly" in its broad sense, this is no monopoly whatsoever. Monopoly implies harming your competitors, suppressing competition. There is no suppression of competition here involved.

This is the matter discussed at great length in the Columbia Steel case, where it was pointed out, and it was also referred to in the Paramount case, and the Yellow Cab case, that a valid business purpose is to be distinguished, on the one hand, from a purpose to destroy and suppress competition, on the other, and I submit that our showing in this case shows most emphatically and without dispute the valid business purpose here involved.

Mr. King also testified as to the steps that have been taken to satisfy that increased need. He testified concerning this twenty-odd million dollar budget in 1946, which was adopted by the Board of Directors, and which Mr. King himself helped prepare, at the direction of Mr. Dinkins, who was the [fol. 3291] vice-president.

He testified that the expenditures started in 1946, and have continued to date, are still continuing, and that pursuant to that budget, that twenty-odd million dollar budget, that the greater number of properties which were acquired, 90 per cent of them, were unimproved sites and vacant properties, and the balance were existing service stations, I think he said.

The important part, from the standpoint of the government's charge as to whether there is a monopoly and monopolistic practice here involved, even though there is no such issue, is Mr. King's testimony that in spite of the expenditure of that money there has been no increase in the number of Richfield's L-O units in the last 10 to 12 year period. He showed, and Defendant's Exhibit M-4 will show that Richfield has fewer L-O stations today than it had in 1940 or 1941. Mr. King explained the reasons for the fewer number of stations: obsolescence, failure of renewal of leases, highway changes, and so on.

The next important factor in this relationship, going beyond Richfield's purpose in having L-O stations, is the

source of the operators. Where does Richfield get them, and who are they?

Applications are filed by various persons seeking service stations. Some of the government's witnesses testified that [fol. 3292] they were looking for stations, Mr. Cooper and Mr. Pierce, both L-O operators, and they said they were looking for service stations, and that Richfield's practice was to limit them to operate one of Richfield's stations. [fol. 3293] Mr. King and Mr. Dusto also testified that another source of operators is helpers in other service stations, salaried employees in other service stations. And Richfield obtains them by advertising and then gets them from businessmen.

Mr. King testified, on page 1698, that few, if any, operators were independent dealers in Richfield's stations before becoming L-O operators. That, I think, is particularly significant in the light of the Curtis case, where there was sharp differentiation made. In the Curtis case, the court will recall, that was a Federal Trade Commission case. The Commission's complaint originally covered 1,535 wholesale dealers. The Federal Trade Commission found a violation of Section 3 of the Clayton Act as to 447 of these dealers who, prior to this relationship with Curtis, had been regularly accustomed to dealing with Curtis's competitors.

But significant, too, for this purpose, is the fact that even the Federal Trade Commission found that there was no possibility of attack as to the balance of the 1,535 who had not been engaged in this business prior to their relationship with Curtis. That case is discussed on pages 21 and 22 of our original memorandum.

The next factor is the qualities in which Richfield is interested. As I mentioned, business, character, stability, reputation in the community. Mr. King expressed it: [fol. 3294] "People who will be a credit to Richfield in meeting the public."

Mr. Dusto says: "We attempt to find the best possible type of man to do the best job we can with these L-O stations."

The Government's witnesses testified the same concerning the qualities of L-O operators. I refer to the testimony of Government's witnesses Mr. Minor and Mr. Pitman.

Not that these men, the L-O operators, become employees of Richfield, but it is significant to note as to whether or not these men are customers of Richfield, whether this is strictly a buy and sell relationship, these men make out employment forms and show their qualifications. I refer the court to the forms attached to Defendant's Exhibit A, which is the stipulation of facts with the Government. These forms are used by the prospective operators. That was testified to by Mr. Dusto. It was also testified to by Government's witness Mr. Minor, the merchandiser, and Mr. Delucchi, one of the L-O operators that testified that he made out one of these forms, and the form he made out is Defendant's Exhibit K.

These operators after they are in a station, and even before they are in a station on some occasions, are told of promotions, and actual instances of promotions from one station to a better station occurs.

[fol. 3295] Mr. Delucchi was a helper in one station and was given a station of his own to operate.

Mr. Dusto, on pages 1930-7-8, testified as to various instances of promotions, and said there were various others, that he was not called upon to enumerate.

Mr. Bowe, one of the Government's witnesses, was an L-O operator and he was promoted not to another L-O station but to a salaried job with Richfield as a merchandiser

One of the most important phases of this relationship is what these prospective operators are told when they have been approved as prospective operators and before they are installed in the station.

Mr. King testified as to this in some length. So did the various Government witnesses, the merchandisers, Mr. Shewbridge and Mr. Pittman and Lieutenant—I have forgotten the lieutenant's name.

Mr. Hall: Weston.

Mr. Paradise: Lieutenant Weston. There was another operator whose name I have forgotten for the moment.

But Mr. Dusto testified in detail as to the various aspects, and I think his testimony shows a summarization of all of them, and these are the factors which are called to the attention of the prospective operator by the merchandiser and that this is uniform practice throughout the company in all three divisions.

[fol. 3296] First, as to the uniforms, the prospective dealer is told it is a requirement that he must wear a uniform.

I won't refer more to Mr. Dusto, his testimony, I mean, individually on each item. His testimony on these phases starts on page 1920 and goes all the way over to 1947. So all this testimony is from Mr. Dusto, but it summarizes all of the testimony that has come in on both sides.

After the matter of uniforms, the matter of the number of employees. The man must have a minimum crew sufficient to take care of the operations of the station.

The matter of the hours that the station is to remain open in order to produce the maximum business. That is told to the man. The man is instructed as to his personal cleanliness and appearance.

Mr. Dusto said, "A great deal of emphasis"—and here I am quoting:

> "A great deal of emphasis is laid on the fact that he has to come to the station clean-shaven and change his uniform as often as necessary to present a good appearance when he contacts the public."

He was instructed as to the pump island procedure and his manner of dealing with the public and the way Richfield wanted him to.

The merchandiser solicits business for the station. I am [fol. 3297] going to refer to that again when we come to this question of goodwill and whether this man has any goodwill. The merchandiser solicits the business for the station.

This man who was a lieutenant from Arizona, Lt. Pittman, testified that he made over a thousand calls with operators in the neighborhood of these stations, trying to develop business for the station.

The Court: That is at the inception.

Mr. Paradise: Yes, that is right. There is the instruction, of course, concerning handling Richfield petroleum products exclusively. That the TBA should be bought from the local distributor if the latter is able to supply the operator, and the TBA should be the approved TBA.

And Mr. Dusto gave the reason that is told to the operator. He said, on page 1924, that the merchandiser is in-

structed that when the question comes up as to the reason why the man has to handle Richfield products exclusively, if there is a question raised by the prospective operator—and this is his testimony I quote:

> "To tell the prospective operator that Richfield created this station for the purpose of selling its own petroleum products, and we did not build the station to provide competition a place to do business."

Mr. Dusto testified that there are instructions to the operator as to how to order petroleum products and place [fol. 3298] orders. He is instructed as to the credit card procedure. He is instructed that there are to be no unapproved merchandise, and he is instructed why there are to be no competitive signs—not limited to the surface of the building, but anywhere on the service station premises, no curb signs of any sort.

The Court: Give me the page of that. I want to make a note of that.

Mr. Paradise: I beg pardon?

The Court: Give me the page.

Mr. Paradise: I am talking now from 1925-27.

The Court: I just wanted the page when you got through. That is a very good summarization of instructions and I wanted to put it down. All right.

Mr. Paradise: The operator is instructed to attend meetings when they are called. He is instructed concerning the merchandise in the station by the merchandiser. He is instructed to buy certain things from the outgoing operator.

The merchandising of the station I will get back to, but I want to emphasize what he is instructed as to what he can buy and what he should buy. He is instructed that he must buy certain things from the outgoing operator. He is instructed that he must buy Richfield petroleum products, and not others. He is instructed that he should buy salable approved TBA items at wholesale, and not to buy non-approved TBA items. He is instructed to buy approved [fol. 3299] service station equipment, which is lube units, and he described there are three brands which are approved as Standard tools in Richfield stations, and he buys those from the outgoing operator at the depreciated value.

Equally important is what he is told as to Richfield's obligation when he is terminated. Richfield sees to it that the approved items will be disposed of to the income operator when the outgoing operator leaves, the approved items only.

Mr. Dusto said this, or I think this is Mr. King's statement, to enlarge on Mr. Dusto's statement at this point:

> "Generally the incoming operator takes over the inventory equipment at values previously mentioned."

This is page 1712. Mr. King said further that:

> "If for any reason the station is not maintained in operation, in other words, if an operator is not being immediately checked into the station, then in that case Richfield would credit his account or take the merchandise back."

I think it is appropriate at this point to break off from Mr. Dusto's testimony and discuss the matter of Mr.——

The Court: Just a moment. I was just checking on the time and I wondered if you wanted a recess now.

Mr. Paradise: Yes, thank you, your Honor.

The Court: That will give you about two hours, then we can finish this afternoon, gentlemen. All right, 2:00 o'clock.

[fol. 3300] (Whereupon, a recess was taken until 2:00 o'clock p. m. of the same day, Wednesday, June 6, 1951.)

[fol. 3301] Los Angeles, California, Wednesday, June 6, 1951 2:00 P.M.

The Court: All right.

Mr. Paradise: I think the last matter I mentioned this morning, your Honor, in relation to Mr. Dusto's testimony as to the large number of items on which the prospective applicant for an L-O station is instructed before he takes over the premises is the matter of what Richfield will do in connection with the disposition of his inventory of petroleum products, that is, the Richfield's petroleum products, his approved TBA and his approved service station equipment.

Mr. Dusto also mentioned that the operator is instructed on the stocking plan, how to stock the station with petroleum products and TBA.

Then there were instructions on the next topic, to use the colloquial phrase that is used in the trade, of "no blue skies." Mr. Dusto testified that "blue sky" means the payment for goodwill. The merchandiser is instructed to see to it that no money changes hands other than the exact value of the merchandise and the equipment, no "blue sky."

In other words, the operator, the incoming operator, is not permitted to pay anything for goodwill, a changeable factor, nor is the outgoing operator permitted to sell any. Both of them are in on a 24-hour basis and there is no goodwill [fol. 3302] factor to be built up or which could be built up which is a salable item by the operator.

Mr. Dusto testified that, as to the reasons for that instruction, he said—and I quote from page 1934:

> "Because the outgoing operator has nothing to sell other than his merchandise and equipment. He has no goodwill."

The subject matter of goodwill was commented on yesterday by your Honor during Mr. Dixon's argument, and I would like to take time out for a moment and discuss your Honor's statement. On page 2079 of the transcript your Honor said, in commenting on this relationship:

> "He (referring to the L-O operator) has no interest in the goodwill that he builds up. We"——

the word is "we" but I think it meant "Richfield" can. "We," I think you were personifying Richfield.

> "We can destroy it in 24 hours, and we can destroy his property values by saying to him to take his junk out of the station, except such as we tell the man we choose to take. We will not recognize any man he recommends, even though the man would give him $5,000 or $6,000."

I would like to point out, solely because this is the DeLonge case to which your Honor was referring, was such a hardship case, that there are a lot of mitigating things concerning that.

[fol. 3303] The Court: I was trying to state your position in its most extreme form, only to point out the absoluteness of control that you claim to exercise, you see, so far as the L-O station is concerned. In other words, I was putting your position as strongly as it can be put, without any reflection on the methods. I did not mean to criticize methods at all.

You notice how they (transcripts) pile up here. You can always watch them go up. I never look at them when I leave, because I don't like to look at them until later on when I want to refer to the transcript to clarify my thought.

And I was talking to the proposition that, to use the language of the street, you are not making any bones about the control that you exercise over the L-O stations.

Mr. Paradise: That is correct, your Honor.

The Court: That is the point I was making to Mr. Dixon. And I think your argument today emphasizes it, and I think you agree with me that, so far as those stations are concerned, it is purely a question of law whether that is a type of relationship that can be considered independent for the purpose of applying the rule of the Standard case.

[fol. 3304] Mr. Paradise: Perhaps it was just a matter of phraseology, then, the same as it is in the record.

The Court: Don't trip me up on a little phrasing.

Mr. Paradise: I think it went a little deeper than that.

The Court: After all, in a long case, in the course of discussion there may be an unfortunate use of language, and if you imply from my language a criticism or an attempt to use that extreme case as typical, why, I will state it was not so intended.

Mr. Paradise: That is not precisely what I have in mind. We assert, as you just stated, that the control is absolute. The part that I felt was not precisely accurate was this: It is our position that the man never does acquire any good will, rather than that he does have his good will that was built up and then Richfield deliberately destroys it. There never was any is the point, and, as I say, that may be a matter of phraseology.

Now, your Honor's reference to the merchandiser, Mr. Knudson, suggested that I make mention of Mr. DeLonge's testimony in a couple of matters. Your Honor inquired whether Mr. Knudson did not know that Mr. DeLonge had

originally bought the repair tools and garage equipment with Richfield's knowledge, and Mr. Knudson said he became a merchandiser after Mr. DeLonge was already in the station. Mr. DeLonge testified that before he went into the [fol. 3305] station he was told by this same man, Mr. Kisor, —I think he told Mr. Kisor that he could buy a half interest in the station and in this partnership for $3,000, and he testified on pages 1164 and '65, and on page 1202, that before he laid out any money whatsoever to the former operator, a Mr. Million and his partner, that Mr. Kisor told him not to pay anything for good will, that he told him if he waited a week, he could get it for nothing. Mr. DeLonge testified that he didn't want to do business that way, and he wanted to make some payment to these men and Mr. Kisor said, "I don't know what you are paying for, but go ahead if you want to."

Mr. DeLonge also testified that this loss that he suffered in the end, this $5400, did not include anything for good will, that he realized he had no good will to sell.

Then I think it is important that Mr. DeLonge, even though his was a hardship case, was the one who wanted to get out. He testified that a month before he left the station he told Mr. Knudson that he wanted to get out, that the work was too hard for him. That appears at pages 1221 and '22, and in Mr. Knudson's testimony at page 1958. The loss he took, that Mr. DeLonge suffered, in the end was not over $550 for unauthorized merchandise, that the things he failed to sell to Mr. Winters, the incoming purchaser and this automatic radiator man, amounted to $3,000 to $3500, and those [fol. 3306] were garage and repair tools that Mr. DeLonge bought on his own and Richfield had nothing to do with.

The government put in its Exhibit 20-A, which is a report to Richfield's division manager, Mr. Kirby, and I think that Exhibt 20-A, which the government saw fit to put in as its exhibit, is pertinent. It outlines what Mr. DeLonge's claim that he litigated against Richfield was, and which he stated ultimately broke him financially. One of the items was for salary, and he considered himself an employee of Richfield, he was claiming salary for himself and his helper. I would like also to point out, and solely for the purpose of Richfield's good reputation in this matter, that that claim did not include the $100 per month that he testified went to Mr.

Kisor, and which Richfield very much regrets, but never knew about until Mr. DeLonge took the stand.

I thought it was appropriate, your Honor, to mention that in connection with the discussion of blue sky and good will.

Now, getting back to the items that Mr. Dusto testified are covered with the prospective applicant for an L-O station, the matters on which the applicant is instructed, he testified that this Form 542——

The Court: Just one minute.

Mr. Paradise: Pardon me.

The Court: Go ahead.

[fol. 3307] Mr. Paradise: He testified that the 542 lease is discussed paragraph by paragraph. He testified that the reason for the 24-hour clause is always discussed with the prospective operator. By the way, that 24-hour clause came into the 542 form in 1941, as shown in Government's Exhibit 1-B, and not in 1943, in Government's Exhibit 1-D. It has been in use consistently since 1941, and the use of it is described and discussed in the stipulation of facts, which is Defendant's Exhibit A.

Mr. Dusto also testified to the Richfield rental policy of charging one cent per gallon, and he testified further and explained the flat rental policy, and the reasons for it.

The matters and items which are explained to and discussed with the prospective applicant were summed up rather briefly, but fairly well, by the government's witness, Lt. Pittman, and I think his language is particularly interesting. Lt. Pittman, you will recall, was a merchandiser who dealt with L-O stations in the Arizona territory. He said on page 546:

> "I see that the dealer is in uniform at all times, that his station is kept properly policed,"—and, by the way, although he used the word "dealer" these are L-O stations only that he is talking about. He said, "I see that the dealer is in uniform at all times, that his station is [fol. 3308] kept properly policed, that is, that it is kept clean and operated in an orderly manner, that the dealer himself is acquainted with our products and he is acquainted with the servicing of his customers' cars. In other words, that he knows what he is doing in the station as far as service is concerned. That he is operating

reasonable hours to service his neighborhood or his trade, that he maintains a degree of loyalty towards our company. I think that would pretty well summarize it."

That was Lt. Pittman's statement, and I think the use of the word "loyalty" is significant. We have asserted there is an intimate relationship between Richfield and these people, certainly far more than a relationship of buyer and seller, as the government contends, and the reason for that intimate relationship is discussed in various of the authorities cited in our memorandum, the printed memorandum that was filed originally. Mr. Dusto also testified——

The Court: The only thing is this: I have read that memorandum several times, and I have studied some of the cases, and I don't find any case there that creates a new relationship apart from the recognized relationship. The farthest they go is to use the del credere relationship, that is, where a factor is responsible for the losses to his principal, then [fol. 3309] he assumes a relationship, a del credere relationship, a fiduciary relationship which, while not partaking of that of an employee, gives him a specific status. But I do not find in any of those cases any intimation that you can take an ordinary leasehold relationship, whereby you put a man in possession of property, have him assume responsibility for what he sells, but you controlling the products he sells, you having the right to terminate his leasehold upon short notice for non-compliance, you regulating his private conduct to the extent of seeing that he is clean-shaven, and that he wears clean clothes, you insisting that he acquires nothing more than a tenancy by sufferance, you see, which cannot develop into good will, and by merely imposing those conditions overcome the fact that his relationship carries with it responsibilities of his own that far exceed the control that you exercise, because your control is merely a power to terminate at your will.

[fol. 3310] Supposing you employ a man under the "shotgun" contract, that is, provided that he is employed so long as his work is satisfactory. He does not cease to be an employee by the mere fact that you can terminate it immediately. And the courts have held that there are contracts which provide for direct employment for a definite time, and yet contain a clause that those may be terminable

if the services of the employee are unsatisfactory, which merely puts the employee at the will of the employer so far as the term is concerned.

But I know of no law, no case which says that that relationship ceases to be one of employer and employee. Do I make my point clear?

Mr. Paradise: Yes, indeed, your Honor. I am going to develop that fully in my law argument on this, and I have just a few more statements to make concerning the facts of the relationship, and I am pleased to have your Honor's remarks about that, because I want to devote my argument to that point particularly.

I appreciate that that is the crux of this entire problem insofar as the antitrust laws are concerned.

These other facts, before we get to the law, are pertinent to the——

The Court: Another thing is this: I have read that brief and you do not help me by repeating what is in the brief, because I am not going to decide this case from the bench, [fol. 3311] you see. I will give you notice of that, although I could decide it from the bench. I have done that before in cases as important as this one, but this case requires some additional work before I can decide it. And, frankly, I have not read all the exhibits in the case in full. So I will have to do additional work. And in view of the fact that you have a written statement, I would prefer that instead of reading to me statements, you merely emphasize something that is already there, because I have read it. Of course, I realize that that is written in anticipation. That is why I pay very little attention to a brief. I have never penalized the lawyer yet for not filing a trial brief. They are helpful at times. Of necessity you anticipate what is going to develop, and that is why I like oral argument, because we can direct a discussion into the proper channels.

So it will be helpful if you merely emphasize some of the points, rather than to use up your time in repeating what is already there and what I will have to re-read before I decide this case.

Mr. Paradise: Thank you, your Honor.

The Court: I will probably write an opinion in the case, too, and bearing in mind that I cannot take two or three weeks off to write it, you have got to make my work as

easy as possible because I have to do it in between. You get out today and tomorrow we are occupied with the hearings, [fol. 3312] and Friday I am going down to San Diego and Monday I have another long day, and on Tuesday I begin trial of a civil antitrust case. That is the way our work goes. I am not complaining. I chose this job. I was not asked to take it. I asked for it.

But I am saying that so as to perhaps save time where the doing of things would be merely repetitious of what is already in the record.

Mr. Paradise: Thank you, your Honor. I had no intention of rearguing all the matters in our brief. We have taken the liberty of following your Honor's suggestion at the close of the presentation of evidence. Your Honor suggested that if we had any additional authorities, to submit them.

The Court: That is right.

Mr. Paradise: We do have additional authorities. They are not antitrust authorities but we suggest that they are most and are particularly pertinent to the proposition or the problem that your Honor suggested as to the relationship of this L-O operator to Richfield and the definition of the relationship.

To wind up the statement of facts as to which there is but little, if any, dispute between Richfield and the Government, there is the problem of the procedure on check-in which Mr. Dusto also testified to.

Now I am directing my attention to the record from pages [fol. 3313] 1936 to 1939. Mr. Dusto testified that the standard procedure is that the prospective operator signs this 542 lease before he does anything else.

It was suggested in the Government's opening statement that two operators—I think they were Mr. Smith and Mr. Ellena—did not know—no, that was not the statement. The statement was made that they could have the property on a long-term basis. I do not think that the Government intended to suggest that there was a deviation from the 24-hour clause or suggestion that the 24-hour clause was being waived.

Mr. Ellena testified he was thoroughly aware of the 24-hour clause, and Mr. Smith, the L-O operator from some-

where near Long Beach, testified that, if I recall his language properly, the Richfield man said he hoped he would be in there for some time, and he would be so long as he played ball with Richfield. Mr. Smith said that he was often caught off first base, to use his language, in the handling of competitive merchandise.

Mr. Dusto also testified as to what the merchandiser does with the prospective operator when he goes into the station. The merchandiser is instructed to spend a minimum of five days with the operator in instructing him as to the detailed operation of the station, the manner of it, and thereafter he calls on him either from two times a week to once a month, depending upon the operator's ability.

[fol. 3314] The merchandiser is instructed to use Richfield's form 1071 as a training guide. And your Honor will recall Exhibit V, which is a series of printed forms containing detailed instructions on the myriad of individual items of procedure that occur in economically handling the operation of the service station.

Mr. Dusto also testified concerning the proper use of Form 205, that is, that service station survey, the grading of L-O operators, and that the form is used every 60 days by the merchandiser with each L-O operator.

He talked about the termination of L-O operators, both the circumstances justifying the termination and how it occurred.

Mr. Dusto testified that the operator is not terminated for his first infraction of the rules, and that that is standard procedure by the company to try to make the man satisfactory.

I think that is sufficient, or is directed to the rebuttal of any suggestion by any of the Government L-O witnesses that the man was thrown out the first time he failed to comply with instructions.

Mr. King testified to the same effect, on page 1711. Mr. Dusto's testimony is at 1943.

Mr. Dusto testified concerning the circumstances under which a merchandiser would recommend the displacement [fol. 3315] of the operator, and that consisted of several things: Limited operating hours, insufficient crew, inability to maintain inventory, a dirty station, absentee operation. And then when he forgot it, he did mention in response to

your Honor's inquiry that certainly also failure to carry Richfield products exclusively, that he had overlooked that one.

He testified that everything that he has said constituted standard practices throughout the company.

Mr. Dusto, you will recall, was in charge of the merchandising for the central division. He said he had counterparts in the other divisions, and that these matters that he testified to were standard practices throughout the company.

There is one other matter that I do want to refer to before we pass to the law, and that is the problem of financial assistance and the types of it which have been extended by Richfield to the operators. This, I feel, is pertinent to the relationship because it goes far beyond the relationship of seller and customer which the Government would try to have the court believe that that is the relationship involved.

Mr. King testified about these four different things, from 1699 of the record for several pages thereafter. And the first is the matter of rental reduction.

Rentals were reduced to a dollar per month at various instances. Mr. King's language was this: Rentals are [fol. 3316] reduced—and I quote:

> "Whenever the operator experiences difficulty in developing a satisfactory volume of business, also to assist the operator in establishing a satisfactory volume at a new outlet, whenever it is necessary to assist him in operating the station."

The second type of assistance was loans to operators up to $2,500 so that they could carry adequate merchandise. And Mr. Dusto also testified that these loans were for truck deliveries.

Mr. King testified that another important thing furnished to the L-O operator is this valuable facility, this investment of Richfield's which may be from $25,000 to $35,000, and, to use his words: "A property that would be far beyond the average individual's ability to acquire otherwise." See page 1704.

Mr. King testified that those facilities are furnished to

the L-O operator at less than their fair rental value, and I think here, again, that is a most significant fact.

You will recall that the operator pays a cent a gallon, never more unless there are super facilities such as super buildings and parking lots and so on, for which an additional rental may be charged, and those are the extraordinary stations—one cent a gallon.

Mr. King testified that that is substantially less than [fol. 3317] what Richfield would collect if these stations were put on the open market on a rental basis without any limitation as to the type of product, not a long-term basis. In other words, if you compare what the L-O operator rents it for and what the fair rental value is for a fully equipped station, the L-O operator in recognition of the fact that he is required to do all these things—operate it the way Richfield wants him to, operat- it with Richfield's products, for Richfield's benefit—he gets it at much less than the fair rental value.

Mr. Brower testified that the fair rental value of a fully equipped station is not less than one and a half cents per gallon and the trend is upwards from that. One and a half cents is the minimum.

I call the court's attention to Defendant's Exhibit AA which shows the excess of rentals paid by Richfield on certain L-O stations over and above those received from the L-O operators. The court should realize that the L-O stations there referred to are not their fee owned stations. This is merely a comparison of rentals received and rentals paid on the particular stations which Richfield has rented. So you have a comparison of rentals payable and rentals received on the same stations.

The fourth type of financial assistance extended to the L-O operator—mind you, these have no bearing and no [fol. 3318] counterpart with the independent dealers—is the subsidy letter, which is Exhibit F. That subsidy letter is given to maintain L-O operator's margin during price wars when he meets competition of other stations in his area. This subsidy letter was distinguished sharply by Mr. King from the so-called extra margin letter which is given on occasions to independent dealers, the 3-C's and the 337 dealers, when necessary to meet the competition of

Richfield's competitors or competitive suppliers. The subsidy letter was Defendant's Exhibit R.

Mr. King also testified, you will recall, that this extra margin letter that is given to the independent dealers is never given to the L-O operators. He said—and I quote from page 1891:

> "There is no need to. We are not competing with any other oil company for the business of the L-O operators."

So finally, we come now to the discussion of the law that is applicable to this relationship and what it consists of.

The Government recognizes, as it must, and I gathered from Mr. Dixon's opening statement that it still recognizes these are essential features of the Government's case in so far as the L-O operators are concerned.

One, that the operators are independent businessmen. [fol. 3319] And two, that this is a market which Richfield has foreclosed its competitors from reaching.

We think it significant that neither of those factors is present in the light of the facts and the relationship existing between Richfield and the L-O operator. And by those facts I mean all of the various factors I have discussed: Richfield's purpose in acquiring the stations, the manner in which the operators are selected, the fact that these operators were not in the service station business as independent dealers before they became Richfield L-O operators, all these control items, the matter of what is told to them before they go in, what is expected of them, and the supervision, training, and instruction in the matter of Richfield's obligations in respect of taking their products back, the fact that they have no goodwill, no interest in the fixed assets of investment, and no investment of any nature in the business or in the property, and an interest solely in the merchandise and the standardized tools.

Your Honor in questioning me just a few moments ago concerning the significance of this relationship referred to the power. I submit to the court, and under the cases we will discuss shortly, that this is not just a matter of economic power and compulsion through the use of this 24-hour clause.

This is a matter that Richfield and these operators have [fol. 3320] bargained for in advance, before the operator went in. I do not say that this is a matter of agreement, as Government counsel says it is.

Mr. King testified no oral agreement is made with the L-O operator. He said the L-O operator comes in here and we tell him the conditions on which he is permitted to take this station. We tell him this is what he is required to do if he wants this station, and we furnish it to him at far less than its fair rental value.

I say that he is told, and the evidence is undisputed that they all knew before they went in, that they were in there at the sufferance of 24 hours.

The Court: That is not the point. The law declares contracts which are in restraint or in violation of law, regardless of the agreement of the parties, no question of compulsion, no compulsion enters into it. Supposing they agreed on the most formal conditions. The contract would not be any less violative of the law with respect to restraint of commerce.

Mr. Paradise: Perhaps I misunderstood your Honor's former comment. I thought you were distinguishing between the right to control from the power to control. And I say—and some of the cases which I cite and which are not in our original memorandum, have discussed the question of economic compulsion resulting from the power to [fol. 3321] put the man out of business. Where there was no recognition of the fact in advance——

The Court: You put him there in the first place.

Mr. Paradise: Pardon me?

The Court: There was no recognition at the time you put him there in the first place, is that it?

Mr. Paradise: Where the man did not understand in advance.

The Court: That is not the point. I am not interested in that. We are not concerned with the question of the voluntary character of this arrangement. It is the results insofar as commerce is concerned.

Bear in mind this statute as passed and the Sherman anti-trust law has almost become respectable by age. It was passed in 1890. General Sherman—no, Senator John L. Sherman—that is right, Senator Sherman said that his ob-

ject was to maintain—they did not use the word "free economy" at the time—to maintain competition and maintain relationships between persons who are in the same market upon a fair basis.

He felt that the only way it could be done is to denounce certain practices that had grown up.

In writing my recent opinion on the Patman Act, in one of the footnotes I wrote an essay on the history of the Act because I did a lot of research. I have quite an extensive [fol. 3322] library of Economics at my house, and I wrote quite an essay, citing a great variety of writers, from Professor Schlesinger to Ida Tarbell, who are in various books dealing with anti-trust agitation, and Professor Faulkner, who is the author of a text which is taught in colleges on the Economic History of the United States. I traced the origin of the statute and how it came about. It was not conceived in the hot-headed mind of some agitator. It was of the most conservative element in the Republican Party which controlled both congressmen at that time, including the famous Senator Hore. In fact, Senator Hore claimed he had more to do with it. He was the man, incidentally, who was behind McKinley when McKinley was elected. He complained afterwards: "I don't know why Sherman gets to attach his name to that statute. I had more to do with it than he had."

So we are dealing with a statute that has been on the books for 50 years, or over 50 years—for 60 years. Am I counting right? Yes. And which has been before the courts on various occasions, which expresses a particular policy.

And the statute says: "Contracts which shall be"—and, of course, they had in mind contracts that may be voluntarily entered into, because if it were enough that the contract were involuntary, it would be very easy to say that the statute is not violated. And the courts have gone very far. Look how far they went in this Schwellinger case—is it? [fol. 3323] the fair trade case, Schwellinger v. Schenley. Why, they invalidated the fair trade statutes in 45 states.

Mr. Dixon: 44.

The Court: 44 states, by saying that these are price-fixing statutes. And they had declared in the Socony-Vacuum case and other cases that price-fixing is illegal.

Here are agreements entered into under the aegis of the

state, and yet the Supreme Court says: No, no. You can't do that.

A very interesting case arose in a case of mine. Incidentally, I was the means of bringing about the first declaration of the Supreme Court that the state may be guilty of violating antitrust law in the Brown case. It was a three-judge court, and the State of California had instituted raisin control and it came before a three-judge court and I was one of the judges. Judge Stephens, Judge Cosgrave, and I sat in. We consented to enjoin Brown, who was the state administrator, from enforcing it. I dissented from my brethren. I held that until the raisins went into interstate commerce they were subject to state control. The case went to the Supreme Court. I am happy to say that the Supreme Court agreed with me. They do quite a number of times. You noticed the other day they did in the Hardiman case, Hardiman v. Collins, the Legion raid where I held, although a Legionnaire myself, and although I do not [fol. 3324] approve hoodlumism, whether it is done by Legionnaires or others, that the remedy is a state remedy and not under the federal but state law.

[fol. 3325] So the Circuit Court reversed me, and they reversed the Circuit Court and held I was right, that the civil rights statute did not apply to cases of persons who do not act under state authority.

So in this particular case they took my view, but one very interesting thing happened in the case. When the case was argued, Chief Justice Stone raised the question as to whether the statute covers state violation of the antitrust law. Now, that was not argued before me, I mean as a court, because the only question before us was whether the regulation was constitutional or was an infringement of interstate commerce. So they put the case over for reargument. They continued the matter. I told the Attorney General that if somebody had answered the question quickly, it would not have been submitted, because it could not be raised in that particular action, because it was not an antitrust action brought by anybody, that there were only three kinds of actions that can be brought under the antitrust law, that is, an action like this, a criminal action, and an action of injury by a third person. I told the Attorney General, "Why didn't you answer the Chief Justice by saying that the ques-

tion cannot arise except as an abstract proposition, because this is not one of the three actions under the statute?"

At any rate, I don't know whether that answer would [fol. 3326] have been adequate. Probably the Chief Justice might have said, "While we are at it, we might as well decide it," and so proceed to decide it. They wrote a very extensive opinion, the first one in the United States, in which they held that a state can be guilty of a violation of the antitrust law, either directly or by statute, by authorizing people to do that. And that is the source of the decision that they made the other day, the beginning of it.

Now, I am calling attention to these facts to point to this proposition, that I am not interested in the problem as to whether these men were happy or unhappy, as to whether they were satisfied or dissatisfied, in talking about the L-O station, whether they entered into it knowing fully in advance what to expect or not. All I am interested in is to determine, in addition to the other conditions that you have a right to establish as to them, whether your agreement with them—let's not say "imposition". I was going to say "imposition," but I caught myself—whether your agreement with them, whereby you control the goods that were to be sold and excluded others, and penalized them when they dealt with others, after giving them due warning, whether that, regardless of its voluntary character, regardless of the fact that it is beneficial to them and beneficial to the company, and that possibly a ruling that would invalidate it would result in harm to them and the company and [fol. 3327] to the public, I am interested in only one thing. Is that legal under the antitrust law? And that is all the issue there is as to that, and as to all the others, except to say that as to the others it is a question of fact as to whether there was such a result.

In this case the facts are admitted. The only question is: Is it illegal under the antitrust law?

Mr. Paradise: Your Honor, I think that that is helpful because it permits us to put this matter in *in* its proper perspective.

The Court: This is the only method I know of clarifying my own thoughts, and sometimes young men become upset by a pointed question, but this is not your first case, and I know you did not prepare a speech and if I broke into the

continuity of the speech it would bother you. Well, go back to your original notes and start where you left off.

Mr. Paradise: I think this talk is helpful.

The Court: That is why I like argument. I say I can argue with the man that writes the brief, I can't argue with the brief. The brief does not answer.

Mr. Paradise: This comes at a particularly appropriate place, this discussion, your Honor, because my purpose in showing that the man knows about this before he goes in was not to prove that this was beneficial to Richfield, or beneficial to the man, or beneficial to the public. I appre- [fol. 3328] ciate those factors have no bearing or relevance in an antitrust case, and that is why I objected to a good part of the government's contention over such hardship cases, that they were not relevant to the problem we were discussing. But this is important, your Honor, the fact that the man knows in advance. That is important for an entirely different reason.

Your Honor mentioned that we are discussing and considering the nature of the relationship. Now, some of the Social Security tax cases, in deciding whether a person is an employee or not an employee for purposes of Social Security taxes, have differentiated between a power to control, which was exercised as a matter of economic compulsion afterwards, and a right of control which is understood in advance, before the parties enter into the relationship, and to that extent I think it is pertinent in considering this relationship.

Now, the Sherman Act, as your Honor has well mentioned, is for the purpose of protecting trade and commerce. If there is no——

The Court: The difficulty—I am quite familiar with those cases. I have written quite a number of opinions. In fact, one of the longest opinions I wrote relates to the Federal Employers Liability Act, as to who are and are not employees. That is Hole v. Southern Pacific, and I wrote that in San Francisco, and I analyzed practically every case that [fol. 3329] had arisen, both state and federal, to arrive at a conclusion that a young woman who was a clerk in a claims department, where she performed function No. 3 of a process whereby a claim for loss was adjusted was not engaged in interstate commerce.

The difficulty with taking statutes that are not made for the benefit of persons, and trying to apply them elsewhere lies in the fact that while they both express a desire to achieve social benefit, in the one case the chief aim is the employee, and in the other the chief aim is the public. So that when we are dealing with the Employers Liability Act, we can go very far in holding who is an employee.

In studying that case, for instance, I found out that men who were employed, who never got on a railroad, but who were employed to clean a railroad shed where railroad trains were placed when they came to rest, and where the men had nothing else to do with transportation, were held to be interstate commerce. Also, in the Wage and Hour Act cases, we have the Kirchbaum, and the other cases, where men employed in elevators, in a loft building, where tailors manufactured garments to go in interstate commerce were held to be in interstate commerce.

I was asked some years ago to stretch a point and hold that waitresses in a cafeteria conducted by an independent contractor for the Republic Steel plant at Torrance, merely [fol. 3330] because they were housed in the building and because workmen who work on steel had to be fed, were engaged in interstate commerce. I refused to go to that extent.

So while it is at times helpful to consider control in determining whether a man is or is not an employee, I think when you are dealing with the antitrust law you must bear in mind that the object is this, to stop practices, no matter by whom indulged in or how arrived at, no matter how voluntary their action or how beneficial they were to the people, and that is why we have to confine ourselves to a great extent to the field, except in determining the relationship, where you have to go back to the usual categories in law in determining what relationship does or does not exist.

All right. I will not interrupt you further.

Mr. Paradise: We start this matter of determining the relationship with the initial proposition that an employer-employee relationship—that restraints imposed by the employer on the employee can have no significance as to a possible violation of either the Sherman or the Clayton Act. That, certainly, cannot be disputed.

It is our position, as your Honor knows, after having

examined our brief, and I do not propose to reargue the matters in the brief, but merely to stress some of the particular highlights—it is our position that that is illustrative of a type of reason—put it this way: there is nothing [fol. 3331] in the antitrust laws, either the Sherman Act or the Clayton Act that says that a restraint imposed by an employer on an employee is exempt from the operation of either Act.

The courts have recognized that, as your Honor did in the Standard Oil case, by a recognition of what is the underlying purpose of the Act, and that is to protect trade. The trade performed in Bullock's department store, or in the illustration your Honor gave in the Standard Oil case in a Sears, Roebuck store by an employee of Sears, Roebuck, who is the employer, is Sears' business. It isn't the business of the employee. It isn't a market. And any restraints that Sears, Roebuck imposed upon that man and what goods he could or could not handle in that store would not affect competition, would not affect Sears' competitors, much as Sears' competitors would like to have sold their products through Sears' stores, and through the use of Sears' employees.

We start with that proposition. I think that is basic. A similar proposition is the agency proposition, and the cases have recognized that where there is a relationship of principal and agent, that the business is not that of the agent, it is that of the principal, and that, therefore, any restraints that the principal imposes upon the agent are not restraints on trade and not restraints on competitors, there is no market involved, and, therefore, no possible violation of [fol. 3332] the antitrust laws.

Now, those are not the two sole exceptions to the antitrust laws. Those are merely illustrative of the types of relationship which are held exempt by reason of the recognition of the fact that there is no trade involved.

This is not a market, as Mr. Dixon says. Mr. Dixon has classified Richfield's entire business, in the aggregate of $45,000,000 a year, as a market.

Well, the market here is the market Richfield is competing for against its competitors, and that is the independent service station dealers. These people are not a market, the

L-O operators. These men are not our customers. We select them as people to operate these stations. True, title passes, and that is discussed in this brief, but this is not a market as between Richfield and the operator. This is Richfield's proposition to the public through its own stations. This is the outlet Mr. King talked about. This is what Richfield has to do in order to remain in business to sell its products.

Now, therefore, these matters of the employer-employee relationship and the agency relationship are merely illustrative of the type of a relationship which is cognizable at all under either the Sherman Act or the Clayton Act. Other relationships are pointed out in our brief. They include partnerships, they include joint ventures, and they include [fol. 3333] such things and include matters where there is no principal and agency relationship or employment relationship, but where, nevertheless, there is such an intimate relationship,—and those words "intimate relationship" we didn't coin them, your Honor, that is Mr. Justice Douglas' language, where there is an "intimate relationship," and I am speaking of the Masonite case, an intimate relationship of trust and fidelity resulting from a number of factors as a result of which the parties do not occupy the relationship of mere seller and buyer.

[fol. 3334] The Court: He was dealing with more of a del credere relationship there than anything else. He wasn't laying down rules for future conduct. He was merely analyzing the conditions that warranted them.

Mr. Paradise: I don't say the facts in that case are apposite to this case, but I was distinguishing between restraints imposed by the Masonite Company upon the sales organization of its competitors, except its own sales organization, and that is the language he used.

The Court: And he used the "del credere" phrase.

Mr. Paradise: That is right, because under the General Electric doctrine if you have a true relationship of principal and agent, there is no violation of the antitrust laws, even though—and I think this is very critical—even though the agent is a del credere agent. That merely means this, as we all know, that the del credere agent assumes all the risk of doing business. If he sells to an account of his

own selection, and that account goes broke, that is the risk of loss of the del credere agent, and not the principal, and where there is a del credere agent, even though that man assumes the risk of doing business, that relationship is beyond the scope of the antitrust laws.

The Court: But he is simply a factor in the property that is turned over to him. It still remains the property of the principal, and he is merely responsible for loss.

[fol. 3335] Mr. Paradise: Well, I don't think——

The Court: There is no passage of title. If you are going to talk about "del credere" let us analyze some of the other conditions of a del credere agent. That is all it is, this del credere agency. It is merely a factor who guarantees losses, and in that respect differs from an ordinary factor.

Mr. Paradise: He is the factor who has the risk of doing business, and the only difference between him and an ordinary purchaser is the retention of title. I don't think the antitrust laws are concerned with such a technical difference, legal concept, of whether title is retained or not retained. The antitrust laws are concerned with broad principles of restraints of trade, and, as our brief points out, this matter of what is and is not a restraint goes far beyond the illustration of employer-employee and principal and agent. It has been extended to these various other relationships, where there is an intimate relationship of trust, and fidelity. In the Appalachian Coals case the Supreme Court said:

> ". . . Realities must dominate the judgment. The mere fact that the parties to an agreement eliminate competition between themselves is not enough to condemn it. 'The legality of an agreement or regulation cannot be determined by so simple a test, as whether [fol. 3336] it restrains competition. Every agreement concerning trade, every regulation of trade, restrains.' . . . The familiar illustrations of partnerships and enterprises fairly integrated in the interest of the promotion of commerce, at once occur."

Partnerships, or any restraints imposed by one partner on another, those are not restraints under the antitrust

laws. There is a recognition that that is no market, that there is anything that can affect competitors, and for the reason as this department store illustration we pointed out in our opening statement at the beginning of this case.

The government's contention, if carried to its logical extreme, is this, that, take Bullock's department store, with its own salaried employees, competitors could go to a man like the competitor witnesses here, Quaker State and Pennzoil, and raise that appeal, just as the Robinson department store could go to this man and say, "Look. You can buy Robinson's merchandise at cheaper prices and sell it over Bullock's counter, and make more money than you do," but Bullock's prevented him from doing it. They are affecting competition in the way that the antitrust laws are not designed to restrain competition. And we say, "Look at the relationship between Richfield and the L-O operators," and that is all that is involved in this case.

[fol. 3337] Now, from all of the factors which we have mentioned, which are pertinent to this relationship, the purpose, Richfield's investment, what these men are told, the reason for having these stations, all of those factors were discussed and are discussed and considered in large part in the publishing company cases.

I refer to the discussion in those cases on page 28 to page 31 of our brief, and I will not repeat it, other than to point to the specific language, on page 29, that this was—that the court recognized that this was not an effect on competition, this was a part of the complainant's business, the complainant in that case being Curtis v. The Federal Trade Commission.

On page 31 is a very appropriate quotation that Curtis, "was not throttling or indeed dealing with the ordinary channels of commerce, but was enlarging the sphere of commerce by enlisting in its service the selling power of" these particular "schoolboys" in this case "who, but for this organization, would not only not have taken part in present commerce, but who would have missed the commercial training the Curtis Company alone gave. . . ."

Just as Mr. King has pointed out, facilities have been furnished to these men, having a capital valuation of from $25,000 to $35,000, at far less than the fair rental value, and that they never could have gone into business on their own

[fol. 3338] book value. The court said in the Curtis Publishing Company case that this distributing agency, the agency part of it, its purpose, and the relationship was not that of a buyer, "who thereby acquires title for his own individual purposes."

The court said they acquired title for a specialized purpose, and that was to engage in trade for the benefit of the Curtis Company, and not for the benefit of its competitors.

Now, these matters, as I say, are illustrative of the broader purpose.

The Court: In those cases, what they did was to make them exclusive agents of the Saturday Evening Post, and what was the other publication—the Ladies' Home Journal?

Mr. Dixon: The Pictorial Review.

The Court:—the Pictorial Review, and that is all it was. They did not put them in charge of a business. He was not paying them any rent. He was receiving a commission on the sales, and he had a right to return to them the unsold copies. The new method in that is just to tear off the front page, and they no longer send back the entire copies because the rest is thrown away, and all the agent does now is to tear off the front page to show it has not been sold, and he turns it in and gets credit for it.

As I say, there is a lot of difference between that situation [fol. 3339] and the situation here.

Mr. Paradise: Well, let us take a look at that situation. There is here in the Richfield case a situation similar to the situation in the publishing company cases. We have a comparable factor to the one your Honor just mentioned, that matter of the return of unused merchandise. We give this man, or, I won't say we give it to him. He buys it. He buys his opening inventory of petroleum products, gasoline and lubricating oil. If it is a new station, he just buys it from Richfield. If it is a station already in operation, he buys it from the out going operator. We won't let him buy MacMillan or Quaker State, or other competitive products that he has there, because he is to handle Richfield oil, and he buys that and the approved TBA and the approved small tools, the things that are appropriate to a service station, and when he goes out Richfield assures him it will provide for the sale of that either to the incoming operator, who

will take over the same stuff, or if there is no incoming operator, then Richfield takes it back itself, as Mr. King testified. That is a complete parallel to the publishing company cases.

Your Honor mentioned that in the publishing company case he was not furnished a facility. Well, the non-furnishing of a facility gave the publishing company cases a far less ground for controlling him than Richfield has in this situation.

[fol. 3340] Here Richfield has its investment, and while I have forgotten the number of the exhibit that shows it, I think it is safe to say Richfield has an investment on its books in those costs of something like $20,000,000 in service station sites, and service station buildings, which have been furnished to these men at less than their rental value.

The Court: But your argument, however, overlooks the fact that he still remains a distinct entity, as distinct from yours, while the others are not. All you have to do is to go to the corporation cases, the corporation agent cases, beginning with the subsidiary cases, and we have authority, not only in California, but from the Supreme Court of the United States, which tells us that even complete ownership of stock of a corporation by another does not sufficiently destroy the individuality of the subsidiary so as to make them one. And in the tax field the courts have insisted that one who adopts that form of doing business is responsible. I remember I handled a case that was affirmed by the Court of Appeals the other day, and it was one of these one-man corporations, and my very good friend, and your friend, Frank Doherty, was arguing before me that all this man did was to take money from one pocket and put it in another, speaking as to both corporations. My answer was that that may be true, but he chose to have these two distinct individualities, and for tax purposes, he having chosen to [fol. 3341] do business on that basis, I cannot destroy them. And in the case of national corporations, the Supreme Court, beginning with the Peterson case, Peterson v. Chicago Railway, in 1907, following in the case of Philadelphia Railway Company v. McKibbin, 243 U. S. 264, and Rosenberg Bros. case, in 260 U. S. 516, and the International Harvester case, and the California cases, beginning with

the case of Davenport v. Superior Court down through to the last one, The Thew Shovel Co. v. Superior Court, 35 Cal. App. 2d, 183, have always held that where there are two distinct entities that exist, that the mere fact that one controls the other does not matter.

[fol. 3342] By the same token, they have held that where a representative of the company is a salesman who takes orders which are filled in the east, that they are doing business in the state. That happened in the case of West Publishing Co., where they tried to avoid service here by claiming that these men were not agents of the company. The court held them agents of the company.

So that we have a distinct principle which runs through the various branches of the law which indicates to us criteria by which we must determine what the particular relationship is.

Mr. Paradise: I agree with that most heartily, your Honor. I agree that there are two entities herein involved, Richfield and the L-O operator. I do feel, however, that those cases are not pertinent to this problem, for this reason—perhaps it could best be approached in this fashion: I think your Honor may be troubled by the fact that as to the problem as to whether Richfield has made these men independent, and I think maybe Mr. Dixon was getting to that by his own argument. I think there is the point of complete difference when we compare the facts in this case with the facts in the Standard case. I conceive and concede also, as I did in the opening argument, that if Richfield leased this property to these men for, say—take an L-O operator—Richfield leased this property to an L-O operator for the period of a year or two years or five years [fol. 3343] and gets a fair rental for it, and does not say we are leasing it to you for this limited purpose, and does not supervise him and does not explain what he is to do, that then Richfield is making the man independent. He becomes an independent merchant. Then he is established in business, as are these independent dealers we have in the 337. Then if Richfield should try to exercise its right of economic compulsion, then that might be a restraint of trade.

But that is not involved in this case, and that is the chief and most vital difference between that and the Standard oil case.

We have decided all this in advance. The man knows this before he goes in. We have decided this before he goes in. It is our business, it is Richfield's business. That, I think, is emphasized in some cases that I mentioned before the recess that I want to call to your Honor's attention.

The Court: Another thing, notwithstanding that you do not put it in an instrument in writing, you are maintaining the fiction of leasehold independence by not putting any of these things into the lease.

Mr. Paradise: I would not say it is a fiction, your Honor. These things are the most important part of the relationship.

The Court: But they are not there. They are not in the [fol. 3344] lease. In other words, all these tie-ins, as you call them, all these compulsions you put on him, you see, except the very broad one of terminating on 24-hours the lease, are oral agreements made at the time and understood as a condition, which, of course, legally would not be binding because they are merged into the agreement under the law of California.

Mr. Paradise: I do not think I would agree with that, your Honor, because we are not dealing with the parol evidence rule here. If we were, the Government would not show anything beyond the writing.

The Court: No. In all these cases you can go behind the actual agreement and see what the actual deal is. We are not talking about that. But these conditions that you make as a part of the contract are not spelled out there. I am not practicing state law. I am not telling you you have a good contract. I kind of sympathized with Mr. DeLonge and I tried to give him a little comfort by telling him perhaps he had incompetent lawyers in his presentation of the problems for a final determination by the court.

But I am not giving anybody any advice or finding any flaws with your contract. I am pointing to the fact that you have got a double set of rules, one written and one oral, and you come before the court and say: Look, these are merged into one. Before this man actually goes in he knows what we are going to do to him, whether it is written or not. [fol. 3345] You do not say in the contract that he has got to take only Richfield products. But he knows that if he does not do that we will put him out. So you are trying to

take two contracts and put them together, and say that because they are merged they create a hybrid that requires me to disregard the fact that your primary contract is a contract of lease which leases premises under certain conditions for a rental and has in all other respects the same characteristic as any other lease so far as responsibility, whether judged by general common law or law of the State of California. It is a leasehold in all respects. It has a term terminable, it has a fixed rental to be paid, it transfers possession, it makes him individually responsible, it does not guarantee him his pay.

I am talking over facts, thinking of all the elements. It makes him responsible for any employees, it makes him responsible for injuries that happen to anyone who comes into the station, it makes him responsible for assault and battery to any persons who come to deal with him. Under the case I myself wrote on the Court of Appeals it makes him responsible to state and federal governments for withholding taxes of the employees. He has to take out his own employer's liability. He is not on your payroll as an employee. You are not responsible for social security, state or federal, and yet you say all these should be disregarded because, by a sideline you have imposed conditions that [fol. 3346] kind of minimize the power that he has.

Mr. Paradise: We are getting at the nub of it, your Honor.

The Court: Of course we are, of course we are.

Mr. Paradise: There are some cases that we want to point out, your Honor, that bear on that precise and very thing, cases which, while they are not antitrust cases, do discuss the nature of this relationship. And these, I want to tell your Honor in advance are all service station cases. These are particularly appropriate on their facts.

First, I want to cite your Honor a group of cases. Most of these are state court cases. One is a federal case, but they are so opposite on the nature of this relationship that they become particularly important at this time.

The first is a group of cases that considers the problem of whether the operator in a situation comparable to an L-O station—this does not involve Richfield—whether the operator of that sort of a station and his helper are em-

ployees of the oil company in Richfield's position for the purpose of the Workmen's Compensation Act.

Second is a group of cases whether the oil company maintains sufficient control over the operators of stations comparable to the L-O stations and the helpers of those operators subject the oil company to liability for chain store [fol. 3347] taxes in states having such legislation.

And third, in a case—a case involving Richfield in one of its own L-O stations, as to whether Richfield is liable for the torts of that operator.

I say that those three groups of cases are particularly pertinent to this question of relationship for three reasons.

The Court: Did they hold in that case that you were or you were not?

Mr. Paradise: They held we were liable as a joint operator of the station. That is the case of *Hayes v. Richfield Oil Corp.*, 103 A. C. A. 23, decided two months ago in California, and involves one of the Richfield L-O stations.

Liability was determined in that case on two grounds: One, landlord and tenant, because Richfield leased it out for a so-called public purpose. This is a decision by the District Court of Appeal.

The Court: Is there a petition for hearing pending?

Mr. Paradise: I beg pardon?

The Court: Is there a petition for hearing pending?

Mr. Paradise: No. It has been denied.

The first alternate ground for the liability was Richfield was jointly in there operating the station.

These three groups of cases are significant in this respect: They demonstrate, first, that the courts in situations comparable to the Richfield L-O situation have held [fol. 3348] that, notwithstanding the existence of a lease or the landlord and tenant relationship, that the true relationship more closely resembles that of master and servant.

This, I think, is critical to this entire problem. On the basis of such holding in each instance was the recognition of the control exercised by the lessor oil company over and above its normal rights accruing from a simple landlord and tenant relationship.

The Court: You must, however, bear this in mind when

it comes to a piece of social legislation like that of the United States of America we are not bound to follow interpretation of state statutes as to the relationship.

Mr. Paradise: Oh, I understand that.

The Court: I have a case now where one of these family partnerships was before me and I held that, despite the fact that this partnership might be recognized by the law of California, where the man took his own daughter, 12 years of age, and his son, 14, into partnership in the flush years when he was making a lot of profits on floor contracts —he had a termination provision, too, a 30-day provision. He could kick the partners out on the 30-day provision. I held that may be good for the state, but the Government of the United States would not recognize that for tax purposes.

So you see, you must bear in mind many times, for the purpose of finding somebody responsible for a tort committed against a third person, a court may hold that a cer- [fol. 3349] tain relationship might be recognized and the same court would not do the same thing when it is dealing with an entirely different relationship. That is very well recognized in law, just as, for instance, under the law of California certain mortgages are not recognized. But as between the parties the court will enforce the contract.

The other day I had a motion picture case. I had to decide for the first time in the United States whether you could foreclose a chattel mortgage to the copyright of a motion picture in the federal court, and I held that you could. In studying the matter I came to the conclusion— it was argued that the State of California does not recognize mortgages on intangibles like a copyright. But I took cognizance of that, but I also took cognizance of the fact that as between the parties themselves the right would be enforced.

The same way in the law of partnership. For instance, we will hold people responsible as partners, although between themselves they are not partners. We will hold people responsible as agents who are not agents.

When I was in the State courts I sat on the Court of Appeals temporarily, pro tem, and I wrote an opinion in Bee v. McClachan, involving an old station here, involved the question whether a woman who was sent out to solicit ad-

[fol. 3350] vertising was duly authorized by an agent. It was quite evident that the man who had authorized her to solicit and promised her compensation was not authorized for that purpose. But we held—and Judge Stephens agreed with me—that so far as she was concerned, she went there seeking employment. They had advertised for agents. She was directed to the man's office. He told her to go out and get it, and it was too late afterwards, when they got the benefit of the contract, to repudiate it on the ground that he had no authority.

Throughout all the law that is the beauty of the Anglo-American system. It is so flexible. We switch from one to the other. We say you are an agent for this purpose and you are not an agent for the other purpose. You are a partner for one purpose and not for the other purpose. We say the State of California may call this a partnership. Uncle Sam won't recognize you for that purpose. So we are constantly realistic. We are not dogmatic.

Mr. Paradise: That is the realistic thing about this, that there is a transfer of title here, that Mr. Dixon pointed out in his opening statement. These men are not customers. Let us be realistic about this. We are not trying to sell them any gasoline. They came in to operate our station. They may be purchasers legally, but they are not our customers, and this is not a market. And that is our case.

[fol. 3351] The Court: All it amounts to is this, that you are giving a property at a bargain price because it is beneficial for you. Suppose you gave them free rent, it would not change any relationship of landlord and tenant merely because you gave them free rent. I can't brush it aside. The spot is there and it won't — out. Because, despite all the rationalization and argument, the fact is that these men are bound by a lease which has all the conditions and considerations imposed, all the obligations of a leasehold.

Mr. Paradise: That is why I thought your Honor would be particularly interested in these three groups of cases, because in each case——

The Court: All right. Have you got them written up?

Mr. Paradise: Yes.

The Court: I mean have you got a list of them?

Mr. Paradise: Yes, your Honor.

The Court: Suppose you hand them to the reporter and

do not take the time to read them to me. Hand them to the reporter to transcribe and put in.

Mr. Paradise: All right. I think particularly important and would like to point out to the court not only from the quotations herein contained, because in each case—I would like to state, first, the scope of these three groups of cases. I won't repeat the facts.

[fol. 3352] Mr. Paradise: In each case I want to point out there was far less control by the oil company of the operator. In each of these cases I want to emphasize these points. Each case involved a situation where the oil company was the supplier and there was a lease, a landlord and tenant relationship, and in most of the cases the lease was for a year and not for 24 hours. There was a transfer of title, and in each case the oil company was attempting to escape responsibility on the ground that this man was independent, he was an independent contractor for liability purposes. They had no control under the chain store tax, under the workmen's compensation acts. He was not their employee. And in none of the cases was the oil company successful. In every case it was held that even though there was a written lease between the parties, that that is not the dominating factor of this relationship.

In one case the question came up, one of these cases—I have forgotten which one it is, offhand—in one case the question came up, the oil company tried to escape chain store tax liability on the grounds that its relationship was just landlord and tenant. It said we have just a simple lease here, the man pays rent. And the court pointed out the oil company is not in the real estate business. The dominant characteristic of this situation, the court pointed out, is that the oil company maintains its property and puts [fol. 3353] this man in here for the purpose of sale of its products.

As your Honor pointed out in the Owl Drug case, the reason that was held to be a lease was based on two primary facts. One was that it had a specific and definite term, a three-year term, as your Honor pointed out. And second, that the rental that was received by the Schlesinger Company was the primary consideration.

In this case, this chain store tax case, the court pointed out that the oil company attempted to escape liability for

chain store taxes. It said that this rental is not the primary consideration. The primary consideration is the fact that the oil company maintains this property and holds it for the purpose of the sale of its products.

Your Honor does not believe that the primary consideration that Richfield has in maintaining these stations is to collect one cent a gallon rent for this property, in view of this $20,000,000 investment and the fact Richfield pays far more rent than that to the property owner.

The primary consideration is the sale of its products in every one of these cases I point out to the court. The landlord-tenant relationship was subjugated. It was held to be paper work only and that the real economic relationship, in the words of your Honor in the Owl Drug case, the realistics of the situation, by Mr. Douglas in the Masonite case, this is a relationship, an intimate relationship. This [fol. 3354] is a part of Richfield's own sales organization.

Now, let us go to the other side of the ledger. Your Honor has pointed to the fact there is no payment of wages, no payment of social security taxes, no workmen's compensation. That is the Government's argument, obviously. They have talked about investment and they have talked about no wages and no social security and no workmen's compensation.

Let us assume that that be true, which these cases prove that it is not. Under these cases there can be no doubt in my mind, in my own personal belief, of the existence of those obligations for payroll taxes, social security taxes, workmen's compensation coverage and the like.

But supposing Richfield did pay those. Is that the Government's point? The Government's point is this: That these men, they say, are independent businessmen.

And how do they prove it? They say we do not pay the man a minimum wage. But this is not a minimum wage case. They say we are not paying social security tax, but this court is not being asked to impose social security taxes on the Richfield Company. If that case comes before your Honor, you will decide whether these men are employees under the Social Security Tax Act. If a workmen's compensation case came before your Honor—of course, it won't, because it is a California problem—you would decide whether these men are employees under workmen's com-

[fol. 3355] pensation. If a tort case came before your Honor, as it did in the case of Richfield v. Hayes, your Honor would be justified in following the law of California—that despite the fact there is a landlord-tenant relationship, despite the fact there is a lease with all these side oral instructions which are conditions on the lease. Your Honor would be perfectly justified in holding, as did the California court, that Richfield is liable for the torts of this man because Richfield is a joint operator of the station.

The Government says we did not declare these men for workmen's compensation purposes, but the Government is not here for the purpose of enforcing the workmen's compensation laws.

The Court: Mr. Dixon has argued it because you cannot segmetize it. They can argue in determining what the characteristics are, following the ordinary norms by which the relationships are established. They are going to say——

Mr. Paradise: Did you want to take a recess?

The Court: Yes, I was going to take that. And then I will order that transcribed into the record right here. It is a good place.

Mr. Paradise: Thank you.

"Defendant's Supplemental Memorandum

"Pursuant to leave of Court granted at the close of trial, defendant sets forth in this Supplemental Memorandum [fol. 3356] authorities not cited in defendant's original memorandum (filed prior to trial), which additional authorities defendant submits are pertinent to the problem of the nature of the relationship between Richfield and the L. O. operators.

I

The cases hereinafter cited involve the nature of the relationship in the light of three different fields of law or frameworks of reference:

1. Whether the operator of an L. O. station and the helpers of such operator are employees of the oil company for purposes of the Workmen's Compensation Acts:

"Continental Oil Co. v. Sirhall, 222 Pac. (2d) 612, (Colo. 1950);

Bieluczyk v. Crown Petroleum Corp., 58 Atl. (2d) 380, (Conn. 1948).

2. Whether the oil company maintains sufficient control over the operators of L. O. stations and their helpers to subject the oil company to liability for chain store taxes in states having such legislation:

Maxwell v. Shell Eastern Petroleum Products, Inc., 90 Fed. (2d) 39, (C. C. A. 4, 1937);
Standard Oil Co. (Indiana) v. State Board of Equalization, 99 Pac. (2d) 229 (Mont, 1940);
Midwestern Petroleum Corp. v. State Board of [fol. 3357] Tax Commissioners, 187 N. E. 882 (Ind. 1933).

3. Whether the oil company is liable to a third party for torts of the L. O. operator on a theory or basis of liability different from that of mere landlord:

Hayes v. Richfield Oil Corporation, 103 A. C. A. 23, (Cal. 1951).

Before proceeding to a digest of the facts and pertinent holdings of the above cases, defendant respectfully suggests that they are of particular importance in the present inquiry in the following respects:

(a) They demonstrate that the courts in situations similar to the L. O. relationship have held that, notwithstanding the existence of a lease or a landlord-tenant relationship, the true relationship more closely resembles that of master and servant. The basis of such holding in each instance was the recognition of the control exercised by the lessor oil company over and beyond rights accruing from a simple landlord and tenant relationship.

It is significant to note that in most of the cases cited there appeared to be less control and less bargained-for right of control than Richfield has over its L. O. operators. In most of the cases, the operator had a lease of [fol. 3358] considerably longer duration than the 24-hour termination clause provided for in Richfield's

form 542 which has been in use in all L. O. stations since 1941, (see Stipulation of Facts, defendant's Exhibit A). In most of the cases, there did not exist the factor here present whereby the L. O. operator is told before he goes into Richfield's station that he will be required to conform to Richfield's instructions and directions on a multitude of matters concerning operation, not limited to the simple requirement of exclusive dealing in Richfield's petroleum products and approved T. B. A.

(b) The cases demonstrate that the courts in situations similar to the L. O. relationship have held that, in other fields of law, the oil company does have certain legal responsibilities flowing from the relationship between the oil company and the L. O. operator. (As hereinafter discussed in Part II of this Supplemental Memorandum, the existence or non-existence of such responsibilities does not have any relevance to the question of the application to the L. O. operator situation of Sec. 1 of the Sherman Act or Sec. 3 of the Clayton Act.)

It is significant to note here that in many of the cases above cited the oil company asserted unsuccessfully that the person in the position of the L. O. operator was not 'controlled' or was an 'independent contractor' on the grounds that he was a lessee, that he paid a specified [fol. 3359] rental for the station, that he paid the salaries and wages of his employees and helpers, that he assumed responsibility for and agreed to indemnify the oil company for claims due to his negligence or other grounds.

(c) The cases demonstrate also that the courts, in determining in other fields of law the nature of a relationship comparable to the Richfield-L. O. operator relationship, have not been circumscribed by the form of a transaction but have sought out and have considered decisive the economic realities of the situation.

This approach is consistent with that of Mr. Justice Douglas in the Masonite case (quoted on page 44 of

defendant's original memorandum), and of Judge Yankwich in the Owl Drug case:

> 'In the complex civilization in which we live, in determining the relationships created by written instruments we must bear in mind their essentials, in the light of modern requirements.'

A

Analysis of Workmen's Compensation

Cases Above Cited

1. Continental Oil Co. v. Sirhall, 222 Pac. (2d) 612, (Colorado, 1950.)

[fol. 3360] Here the oil company leased its service station to one Miller for a period of one year at an agreed monthly rental. The claimant for Workmen's Compensation benefits was an employee of Miller who was injured during his employment at the service station; and he asserted the liability of Continental under the provision of the Colorado Workmen's Compensation Act which provided that: 'any * * * corporation operating or engaged in or conducting any business by leasing or contracting out any part or all of the work thereof to any lessee, sublessee, contractor or sub-contractor, shall * * * be construed to be * * * an employer * * *.'

The Court said (pp. 612-613):

> 'Independent of the statute, claimant beyond question was an employee of Miller, and not of the company, * * *
>
> 'We have repeatedly held that this section is valid and that thereby an obligation may, in proper case, be imposed against an owner where the common-law relationship of employer and employee does not exist, in that one may be an employee by virtue of the statute, for the purpose of workmen's compensation, when in fact he is not an employee by common-law definition.'

The Court took pains to point out that the fact that Continental was the lessor to Miller did 'not of itself create [fol. 3361] liability.' The Court held that to make a lessor

liable under the Colorado act, 'there must be facts showing that he is operating, engaged in, or conducting his business by leasing; not merely that he is a lessor.' (p. 613)

The Court noted the oil company's argument that the relationship was solely that of lessor-lessee (p. 613):

> "Miller was ostensibly merely a lessee of the company. In form the relationship was, as alleged, a pure lessor-lessee relationship. There was a specified monthly rental based on the business done at that station during the preceding year, with no share of loss or profit by lessor. There was no right of control of the business or operation reserved by the lessor. Lessee's only formal obligation was to pay the specified rental and keep the property operating and in good condition. He purchased his products from the company for cash. It is urged that the situation is exactly that of any owner of real estate who leases it to another.'

Nevertheless, the court held that under the circumstances Continental 'was operating its business by leasing part of the work of its business to a lessee.' (p. 613)

Particular attention should be given to the distinction by the court of the case of Bukowich v. Ford Motor Co., 59 Pac. (2) 470, (Colorado) wherein the Colorado court had held that the employee of a dealer in Ford Motor Company's products under a written sales contract was [fol. 3362] not to be considered an employee of the Ford Motor Company under the Colorado Workmen's Compensation Act.

(An examination of the decision in the Bukowich case will disclose that the dealer in Ford products occupied a position comparable to the so-called '337 dealer' in the Richfield case.)

The Colorado court in the Continental case distinguished the Bukowich case on the following grounds (p. 614):

> "In that case no question of operating a business by leasing was involved. There, Ford Motor Company did not own either the building or the equipment. Both were held by the local dealer either by virtue of ownership or of lease from some other person without power

of termination by the company; there the sale of the Ford Motor Company products is not shown to have been the dominant part of the dealer's business. * * * Had that company (Ford Motor Company) owned and leased to the dealer a building equipped and adapted principally to the display, sale and service of Ford Motor Company products, by short term lease, and had the dealer's business been restricted almost exclusively to the sale of such products, then the situation might have been analogous to that here presented.'

2. Bieluczyk v. Crown Petroleum Corp., 58 Alt. (2d) [fol. 3363] 380, (Conn. 1948).

Here also the claimant for Workmen's Compensation insurance was a helper in a gasoline station owned by Crown Petroleum Corporation and operated by a Mr. Toomajian under a so-called 'dealer's agreement'. The Court stated that the primary question is whether or not Toomajian was an employee of Crown Petroleum Corporation.

(It does not appear that the Connecticut Workmen's Compensation Act contained any provision comparable to that involved in the Continental Oil case, supra.)

The Court stated the terms of Toomajian's occupancy of the station as follows (p. 382):

'On that day it entered into a written agreement with Toomajian whereby he was to maintain, occupy and use the premises, deal in petroleum products supplied solely by the defendant, diligently carry on the business of the station and comply with all requirements of the defendant, provide necessary assistants at his own expense and responsibility, pay as rent a sum equal to one cent per gallon on all gasoline delivered plus a flat monthly charge of ten dollars for each lubritorium on the premises, and pay all expenses incident to the operation of the station, including heat, water, light, taxes and license privileges. By its express terms the agreement was to remain in force [fol. 3364] until terminated by either party upon five days' written notice, but the defendant reserved the

> right to cancel the contract forthwith if Toomajian did not fully perform his obligations thereunder.'

The Court discussed the various aspects of control by Crown Petroleum Corporation over the operations of its stations and held that, for the purposes of the Connecticut Workmens Compensation Law, Toomajian was an employee of the oil company.

Of particular significance is the Court's discussion of the oil company's contention that its contract with Toomajian was a lease which constituted Toomajian a lessee in contra-distinction to an employee. In rejecting such contention the Court said (p. 384):

> 'The occupancy of the premises by Toomajian with the defendant's permission, for which he paid, falls within the general definition of a landlord and tenant relationship, 51 C. J. S., Landlord & Tenants, Sec. 1; but it is clear upon the facts found that the contract was really one of agency and that the use of the premises was incidental, a permissive use rather than one which gave an exclusive interest in the land. See Guiel v. Barnes, 100 Conn. 737, 742, 125 A. 91; 1 Underhill, Landlord & Tenant, Secs. 210, 211, 213.'

[fol. 3365] B

Analysis of Chain Store Tax Cases Above Cited

1. Maxwell v. Shell Eastern Petroleum Products, Inc., 90 Fed. (2d) 39, (C.C.A. 4, 1937.)

Here the oil company was held subject to the chain store tax of North Carolina which imposed the tax on 'every person * * * engaged in the business of operating or maintaining in this State, under the same general management, supervision or ownership, two or more automotive service stations, or engaged in the business of retail selling and/or delivering of any tires, * * * or motor fuels and/or lubricants, or any of such commodities, or who controls by lease either a lessor or lessee, or by contract, the manner in which any such automotive service station is operated, or the kind or kinds, character or brand or brands of merchandise which are sold therein * * *.'

The various service stations involved were owned or leased by Shell and thereafter sublet to operators under written instruments which included a lease and a written sales contract. In each instance the lease provided for a term of not less than one year, excepting where the oil company's basic lease was for a shorter period. Shell had no right to cancel the lease except for breach by the lessee. The lease provided for a fixed monthly rental 'not exceeding in amount the fair rental value of the premises' but there were various instances of voluntary reduc-
[fol. 3366] tion of rent by the lessor. Some of the leases provided for gallonage rental with minimum amounts in dollars.

The lessee also signed a sales contract terminable by the dealer at the end of each year, but Shell reserved the right to terminate such contract at any time upon ten days' notice. The sales contract originally provided that the operator buy his entire requirements of petroleum products from Shell. The contracts were modified by amendments specifying that the operator purchase specified quantities of gasoline, which quantities represented approximately fifty per cent of the dealer's yearly requirements of the products.

Shell contended it did not control the operators of its stations. The Court found that none of the operators at any of Shell's stations sold any gasoline, lubricating oils or greases other than Shell's.

The Court held that Shell, for purposes of the chain store tax statute, did control the operation of the stations through its control over the premises which Shell exercised through its ownership or tenancy.

The Court said, on page 42:

> 'The Shell Company controlled the premises as owner or as tenant of the owner; and rival producers, knowing that it would not be possible for them to obtain permanent possession, would be unwilling to incur the [fol. 3367] expense of a temporary arrangement with the dealer for the sale of their products.'

2. Standard Oil Co. (Indiana) v. State Board of Equalization, 99 Pac. (2d) 229, (Mont. 1940).

This case involved the chain store license tax law of Montana, which defined a store to include any establishment 'owned, operated, maintained or controlled by the same person, firm, corporation, * * * in which goods, wares or merchandise or petroleum products of any kind, are sold, either at retail or wholesale'. The stations here involved were leased fully equipped by Standard Oil Company (Indiana) to operators under leases providing for a term of six months and providing for rental on a gallonage basis. The Court stated that 'The single fact question determinative of this cause is the one of control of the leased stations of the plaintiff'. (p. 231)

The oil company had contended that there was no requirement that the operators buy petroleum products from it and that its only connection with the stations was owning the parcels and leasing them 'to independent persons' who in turn retailed the commodities sold to them by the plaintiff. The Court rejected such contention flatly and held that there was a sufficient control for purposes of chain store taxation. The Court said (p. 231):

'The short term of the leases negatives the idea that the plaintiff was only in the real estate business and was not [fol. 3368] protecting its wholesale petroleum products outlet by arrangements whereby lessees of the retail stations would be forced to buy Standard Oil products.' The Court called attention to the plaintiff's inspection of the stations and the manner in which the business was conducted and the courses of instructions to operators and instructions as to methods. The Court made the following comment on page 233 on Standard's contention that the relationship between Standard and the operator was landlord and tenant:

> 'As we have indicated, the record shows that the primary purpose of the plaintiff in its ownership of the stations and the arrangements under which the stations are leased is to secure the sale of the products of the plaintiff. That fact differentiates the position of the plaintiff and that of the ordinary landlord renting out property for retail store purposes. The ordinary landlord is compensated only by the rental received for the property.'

The foregoing statement is particularly significant when the facts pertaining to the Richfield L. O. stations are compared with the facts involved in the *Owl Drug* case, 12 Fed. Supp. 439.

3. *Midwestern Petroleum Corp. v. State Board of Tax Commissioners*, 187 N. E. 882, (Ind. 1933).

This case involved the chain store tax law of Indiana. [fol. 3369] The oil company contended that it did not sell merchandise at the stations, that the service station dealers bought their petroleum products and owned them and had the right to buy and deal in products purchased from other sources, and that it exercised no control or supervision over the station.

The Court held that the stations were subject to the chain store tax and said (p. 889):

> "III but appellant has reserved the right to cancel any such lease upon written notice a specified number of days in advance; that the only interest of appellant in the station is an outlet for its merchandise. The purpose of the ownership of the stations is the sale of appellant's products. Some of the dealers pay no rent. It is alleged that they are free to buy from other sources, but it is obvious that if they purchase all or a considerable part of their merchandise from any other source, appellant would cancel the lease since appellant is only benefitted by the sale of its products. It is alleged that some of the dealers pay cash rental. To put it another way, some of the dealers look for their compensation to the retail profit of the station, and as compensation receive the entire retail profit, while others are required to pay to appellant part of the retail earnings of the station and retain the balance as their compensation. [fol. 3370] They are in the same situation as employees working on commission, notwithstanding title to the merchandise handled vests in them upon delivery. They are required to pay the wholesale price, but retain the retail price. To say that these stations in their operation are not under the control of appellant would be to ignore the plain fact that the operators must

obey the every dictate of appellant or lose their contract and station.'

C

Analysis of Tort Liability Case

Hayes v. Richfield Oil Corporation, 103 A.C.A., 23 (Cal. 1951).

This case involved a Richfield L. O. station at which the plaintiff was injured when she fell into an open grease pit. The suit was brought against both Richfield and Mr. Scavone, the L. O. operator. The Court held that Richfield was liable for the injury under either of two theories, i. e., (1) as 'joint operator of the station with Scavone', or (2) as lessor who has leased the same for a public service. The Court mentioned the instruction to the jury that Richfield 'retained control over the business of Scavone's Richfield Service' and held that '* * * the jury were warranted by the evidence in finding that appellant was a joint operator with Scavone and therefore liable to respondent.'

[fol. 3371] "II

Some of the cases cited in Part I above are discussed in an article by F. R. Black in 29 Georgetown Law Journal, 439, entitled 'Exclusive Dealer Devices in the Marketing of Petroleum Products.' Mr. Black's article contains the best definition we can find of the attributes of an independent business man. On pages 450 and 451 Mr. Black states that it is 'grotesque' to claim that the operator of a station having most of the attributes of one of Richfield's L. O. stations is 'an independent dealer.' (Defendant would contest most vigorously any contention that the purposes or objectives which Mr. Black ascribes to the creators of the so-called 'Iowa Plan' there discussed have motivated Richfield in the creation or operation of the L. O. stations; and this Court is well aware that there is no evidence in the record from which any of such motives or intentions could be inferred). The defendant does approve, however, Mr. Black's definition (pages 450-451) of an independent business man:

'It is common knowledge that an independent business operator has certain rights and privileges among them being, (a) the right to buy in a competitive market and

deal with several companies, if he *do* desires; (b) the right to select his own fixtures and equipment; (c) to determine his own sales policy; (d) his method of advertising; (e) the manner of display of his products; (f) the good will of his business is his own, transferable at pleasure and for a consideration satisfactory to him; [fol. 3372] and (g) the continuation of his business is not dependent on the will of another.'

The issue in this case in so far as the L. O. stations are concerned is the nature of the relationship between Richfield and the L. O. operators within the framework of whether they constitute on the one hand, independent business men and therefore a legitimate market to Richfield's competitors, or whether, on the other hand, they are not independent business men and the business conducted at the L. O. stations is Richfield's trade and business and it is not a legitimate market for its competitors and is not the subject matter of competition.

This Court's inquiry into the nature of the relationship is concerned solely with the foregoing problem. The issue is not (as suggested by the Plaintiff) whether the L. O. operators are employees or agents of Richfield. Employment or agency relationships have been cited by Defendant merely as illustrations of relationships wherein a restraint imposed upon another party was held not in violation of the Anti-trust laws because of the recognition that there was no legitimate market to competitors involved, and therefore no effect on competition which could violate the Anti-trust Laws. Defendant's original memorandum (pages 17-46) discusses the un-erlying reasons why restraints imposed upon various relationships, including employment, agency, partnership, [fol. 3373] joint venture, and others, are not cognizable under the antitrust laws; i. e. that competition is not affected when there is no legitimate market or subject matter of competition. The language of the antitrust laws does not expressly exempt from their provisions restraints upon either employees or agents; such exemption results from the recognition of the underlying reasons above described. The Government's contention that the L. O. operators are neither employees nor agents is neither conclusive nor even relevant.

The Government's contention appears to be that if the

L. O. operators are proved to be neither agents nor employees, they must be independent contractors, and the Government's ambiguous syllogism is that men who are independent contractors must be classified as independent business men. There is a vital difference between (1) what is an 'independent business man or merchant' in an antitrust framework where the issue concerns the existence or nonexistence of a legitimate market, and (2) what is an independent contractor as differentiated from an agent or employee in other fields of law. The significance of the differentiation between an agent or employee on the one hand and an independent contractor on the other may be important from the standpoint of tort liability, social security taxes, minimum wages or other legal incidents having no relationship whatsoever to the problem of the existence of a legiti-[fol. 3374] mate market within antitrust concepts.

If it is determined under the facts and circumstances here involved that the L. O. operator is not an independent businessman from the standpoint of the concept of the antitrust laws as to competition and the subject matter thereof, there can be no violation of either the Sherman nor the Clayton Acts, notwithstanding that the L. O. operator may be deemed to be an independent contractor when viewed from the standpoint of tort liability, payroll taxes or minimum wages.

It appears to be the position of the Government in this case that if Richfield does not have the responsibilities or liabilities (Workmen's Compensation coverage, social security taxes, tort liability, etc.) attendant upon an employment relationship, then as a penalty for not having such responsibilities, Richfield must be liable under the antitrust laws for requiring the L. O. operators in Richfield's own stations to handle its products exclusively. Richfield submits that such position by the Government contains an absolute *non sequitur*. If it be assumed, arguendo, that Richfield does not have any of such responsibilities or liabilities, such assumption would still be a matter of complete irrelevance to the question of whether Richfield's restrictions upon the L. O. operators violate Sec. 1 of the Sherman Act or Sec. 3 of the Clayton Act.

[fol. 3375] The absence of such responsibilities or liabilities is not, as the Government would suggest, a substitute for or the equivalent of requisite proof by the Government

of the existence of a ligitimate market and of the status of independent business men. Whether or not Richfield has common law or statutory responsibilities in other fields of law resulting from the relationship between it and the L. O. operators is of no concern to this Court in its determination of whether Richfield has violated Sec. 1 of the Sherman Act or Sec. 3 of the Clayton Act.

The Government can point to no judicial decision wherein there has been held to be a violation of either of such sections under the facts and circumstances here existing. (Certainly neither the District Court's decision nor the decision of the Supreme Court in *U. S. vs. Standard Oil Company of California* support the Government's position for the reasons discussed at length in Defendant's original memorandum (pp. 37-40; 49-52).

Richfield submits that in so far as its relationship with L. O. operators is concerned, the Government's charge is in reality an effort to extend the operation of the antitrust laws far beyond their basic and underlying purpose and intention and into a field with which they have traditionally had no application.

Dated: June 5, 1951.

[fol. 3376] Respect*uf*lly submitted, William J. DeMartini, Robert E. Paradise, by —— ——, Attorneys for Defendant.

Krystal & Paradise, of Counsel."

(Short recess.)

[fol. 3377] The Court: You may proceed.

Mr. Paradise: I have furnished, at your Honor's suggestion, a copy of this brief to the reporter. I do want to point out the highlights of two or more of the most significant cases, your Honor, because I feel that these cases answer, once and for all, this problem as to common law categories.

I do not think it is necessary, as I mentioned during the argument, at the time Mr. King testified, to place any name or designation on this relationship, other than to recognize it for what it is,—a relationship where there is no market and no interference with the legitimate rights of competitors.

I now call your Honor's attention to the decision of the Circuit Court of Appeals in the Carter Carburetor case, cited in our original memorandum, where it refers to whether these service stations there involved were the legitimate customers of other competitors of the Carter Carburetor Company.

Now, the government has taken great pains to put on several competitor supplier witnesses, and the type of testimony that came on with respect to these L-O stations is particularly interesting. By and large, these competitors knew that these stations were owned by Richfield and/or leased by Richfield from the property owner and leased out [fol. 3378] to the operator.

Mr. Ellis of the Pennzoil Company said he got wind of it from Mr. William Hall, that Mr. Hall told him about it.

Mr. Ransom of the Gates Tire Company said he at times inquired at the station whether it was our station, and he was told by the Richfield merchandiser at one time that he was wasting his time, and he understood by that that if this L-O operator, Mr. Sheldon, bought tires, he would get into trouble, and yet Mr. Ransom continued to have a salesman call at the station.

Mr. Christie was a competitive TBA salesman, and he stated an L-O operator by the name of Mr. O'Malley told him he should know better than to ask him, the L-O operator, for that order when there was a Richfield representative at the station.

Mr. Behm testified—and I will give just one more illustration on this—he represented the Leiland A. Irish Company, a distributor of Kelley-Springfield tires, and he related a conversation at one of Richfield's L-O stations—this occurs in the transcript at page 1499—and stated that Mr. Vaughn, a Richfield employee, told him that Richfield had a considerable investment in that location, and it was not Richfield's policy for Mr. Jones, the operator, to purchase from anyone other than Richfield suppliers. Mr. Behm, the com- [fol. 3379] petitor, told Mr. Vaughn, the Richfield man, that he would continue to call on that account, and Mr. Vaughn told the operator, in the presence of Mr. Behm, the competitor's representative, that if he continued to buy from the competitors, that Mr. Vaughn would—and I quote—"lower the boom on him."

I cite those instances for this purpose, your Honor, that these men, these so-called competitors to this so-called market, knew that this was not a legitimate market. They knew they were bootlegging and were trying to sneak their products in at the back door. They knew this was a Richfield station, and that, therefore, they stand in no better position than would a salesman trying to sell a product to the salaried employees in one of the Standard Stations, Inc., where your Honor held that, of course, could not be within the contemplation of the antitrust laws, and the government could not assert it was.

The government is disturbed because there is a lot of testimony in this record that these L-O operators could not buy from these people who offered them products. Some of them testified that there was an advantage in trying to buy on the outside, because they could have gotten a larger margin. I submit, furthermore, that that not only fails to show that this is a legitimate market, but it also shows that these men, in accepting a Richfield station with knowledge of [fol. 3380] the fact that they could not handle any products other than those of Richfield, were committing a deliberate fraud on Richfield when they tried to handle other products, and they deserve no sympathy from this court, as the government suggests, if, at the time they moved out of the station, they had on their hands some unauthorized TBA that they were handling, and tried to handle on the side for their own profit and to the detriment of Richfield's profit.

I submit that the government's position is not only nonrealistic in this case, but it is completely illogical.

The brief that I have filed with the court refers to an article by Mr. F. R. Black in the Georgetown Law Journal, and I commend it most heartily to your Honor's examination. It is entitled, "Exclusive Dealer Devices in the Marketing of Petroleum Products."

We do not subscribe to and we contest vigorously any contention that the purposes or objectives which Mr. Black ascribes to the creator of the "Iowa Plan" that is discussed in there, motivated Richfield, and there is no record in this case that could possibly support any such contention. But that article, your Honor, contains the best definition of what is and what is not an independent businessman that we have

been able to find. It is the one I quoted to your Honor from a week and a half ago.

The government has asserted that the issue in this case [fol. 3381] is whether or not these men are agents or employees. We say that the only realistic approach is whether these men are independent businessmen, on the one hand, or not, on the other. If they are not independent businessmen, this is not a market. If they are independent businessmen, this may be a market, as the government contends.

But in view of the underlying reasons why agency and employment relationships are held exempt from the antitrust laws, those are applicable in equal degree to this entire relationship, and it does not have to be defined. It is completely unimportant that it does not fall into any common law category, as the cases which I have cited in this closing memorandum indicate.

The government, I think, is basing its entire case on a most ambiguous syllogism, that is, they state that these men are neither agents nor employees because there are no wages paid, and, therefore, they are independent contractors, and the ambiguous middle term is that if they are independent contractors, they must be independent businessmen.

Well, that does not follow at all. That is a complete non sequitur. These cases that distinguish an agent or employee from an independent contractor for tort purposes and for purposes of some definition of an employee under a statute are dealing with that subject-matter.

Here we are dealing with the question as to whether there [fol. 3382] is a market, whether there is an effect on competition, and here the question is not whether these men are independent contractors, but whether these men are independent businessmen.

I will file this memorandum, but I want to close with one particular thought. Mr. Dixon, in his closing argument, made what I consider as extraordinary a statement as I have ever heard in a court of law. He suggested the type of decree which he asked your Honor to issue in this case with respect to the L-O stations, and the decree that he suggested was that the Richfield Oil Corporation be enjoined from exercising the 24-hour clause for any purpose other than the breach of the provisions of the written lease.

Your Honor knows that that lease gives either party the

right to terminate that lease on 24 hours notice by either party.

Now, Mr. Dixon's suggestion as to the type of decree, and let's bear this in mind, if their position is correct, what type of decree could be issued in this case. Mr. Dixon's suggestion is this, and this is the most remarkable thing I have heard: Mr. Dixon's suggestion is that this court make a decree enjoining the Richfield Oil Corporation from terminating the 542 sublease of any operator for any violation of any term or provision, oral provision, and to limit it to a breach of the provisions of that written form.

[fol. 3383] The Court: Well, here he merely means, or I think he means that he takes the view that these conditions which are restrictive in nature are based on oral understandings, and if the court should hold with him, that the conditions imposed as to the limitation of the products are invalid, then of necessity you would be enjoined from considering that as a condition of breach of the lease.

Mr. Paradise: That is not Mr. Dixon's statement.

The Court: That is my understanding of it.

Mr. Paradise: Mr. Dixon's statement to this court is that the decree should enjoin Richfield from terminating this lease upon anything other than the written conditions.

The Court: When I get that far, I will tell you the type of decree I want. That is one thing I have done all my life, and it gets me into trouble at times. I sometimes regret I did not follow the advice of Judge Hauser, the father of the present judge, who, when I went on the bench, told me not to write opinions or give any real reasons for having opinions. He said that you immediately start an argument. I have never followed that advice, and whenever I make a ruling, counsel never have any difficulty finding out what it is about. Therefore, I seldom have any trouble about findings, because I indicate what the findings are.

In the case of Standard, in addition to the conclusions of law, I picked out eleven specific findings. So, as a matter [fol. 3384] of fact, we had no difficulty, although we did hold a hearing on findings. I think there was a modification in just one or two. I think only one page had to be rewritten, if I remember correctly. So you don't need to worry about the form of decree, because when I get that far, I will tell you.

Mr. Paradise: Yes. I use these illustrations to show the fallaciousness of the government's approach. Mr. Dixon says he doesn't recognize this oral arrangement, this oral understanding. I don't know whether he doesn't believe it, or whether he merely claims it is illegal. If he sought to have us limited in his argument to just the written provisions of the lease, would Mr. Dixon permit us to enforce the rules with respect to uniforms, or hours that the stations remain open, or the number of employees, or the cleanliness of their appearance, or the stations, the pump island procedure, or the credit card procedure, or no competitive signs, or the merchandiser's instructions as to how to operate, or would he approve of all of those conditions except the sole one that this is for the purpose of handling Richfield products.

Would Mr. Dixon have the court in its decree in this case write a new term into this contract? Because Mr. Dixon's approach to this problem is this—and, Mr. Dixon, I am using your name, and will you forgive me? I refer to the government. It is the government's approach to this matter [fol. 3385] that this man, this L-O operator, who now has by the government's approach this windfall of having a station, at which he is paying two-thirds of the fair rental value, should now be permitted to remain in there for the rest of his natural life, the only condition being that he is to pay the gallonage rent, whether he handles Richfield's products or not?

I submit to the court that is the most drastic thing I have ever heard of. That goes far beyond divestiture. Divestiture in a decree in a monopoly case would permit the defendant to dispose of his property for the fair sale value.

The decree the government suggests, which is consonant with their entire theory as to the L-O operators, is that this man should be permitted to stay there forever, for life, at less than the fair rental value, and that Richfield should bear the cost of it. That, I submit, is what Mr. Dixon says is the Department of Justice's concept of "The American Way," to quote his last argument.

If the court should determine that the relationship is not as we suggest, one that is wholly exempt and not cognizable under the antitrust laws, I submit that the court must nevertheless then examine, under both the Sherman Act and

the Clayton Act, the question of reasonableness, and the question of substantiality, and I submit that if the analysis of this problem ever gets to that point, that there is no un- [fol. 3386] reasonableness and there is no substantiality, particularly when the number of stations and the amount of commerce involved is viewed in the light of defendant's Exhibit W, which is the statistics showing that over 81 per cent of these stations were self-created by Richfield. They were never taken away from competitors. Competitors' products were never sold in them. They were created by Richfield, and your Honor will recall the language in the Columbia Steel case. The question is, and the real question is, whether Richfield has unreasonably interfered with the opportunity of its competitors to market their products, and there isn't a word of testimony to that effect in this record.

In conclusion, I would like to thank you, your Honor, for the attention and patience throughout this entire case, and I express the appreciation of Mr. DeMartini as well.

The Court: All right.

Rebuttal Argument

Mr. Dixon: May it please the court, I wish first to correct in my remarks the comments of counsel with reference to the alleged lack of evidence applicable to the 337 and the 3-C type of arrangement.

The defendant has suggested that only four or five witnesses who operated such outlets testified on behalf of the government. I think the defendant has overlooked the fact that the testimony of former employees of the defendant was given concerning these stations and outlets, and the [fol. 3387] practice of the company with reference to the restraints complained of as against those outlets.

For example, Mr. Cowan, who was a salesman, and your Honor will recall that salesmen contacted only the 337 and 3-C types of outlets. He testified with reference to the conversations had with those dealers, the dealers operating that type of outlet, and this is in the record at page 286, "that the same precise conversation was applied" with reference to those dealers as was applied to the L-O type in

enforcing the program. He proceeds and says, and this is at page 287, "the same idea was discussed in probably a little lighter flavor."

[fol. 3388] I believe that language describes the approach and restraint as applied to these outlets as well as it could be described. It was obviously not strong in its application, because the sanction was a little less evident in these outlets as it was with the 24-hour clause always present to apply to the L-O dealers.

The witness Mr. Scollard, also a salesman for the defendant, testified concerning the policy of the company with reference to the outlet which he conducted, and his statement at 982 was, that the policy was that they were to handle just nothing but approved merchandise. And examples thereof, some of the signs in the Kawalski and the Carver stations were further testified to in his testimony.

And then Mr. Duarte, another former employee, a bulk plant distributor—perhaps you might not call him an employee—but he was certainly a representative of the defendant who sold petroleum products and TBA accessories to all outlets, and his testimony came out on cross examination at page 318, when he was being asked with reference to the painting agreement. And he says:

> "As far as I could remember, six years back or better, that was a painting agreement, and all I can tell you is this, that Richfield would preach to us this thing, that that painting agreement, while that station was painted Richfield colors, they asked us to tell the oper-
> [fol. 3389] ator that while those Richfield colors were there and they spent money to paint it, that they shouldn't handle anything but Richfield products."

Now, there is the additional testimony of three former representatives of the defendant concerning the 337 and 3-C type of stations with reference to the TBA and the petroleum products phase of the case, and the restraint imposed on them to buy those products.

Much has been said in this case about the nature of these arrangements by the defendant, and they have endeavored to justify their lease under the 3-C type of arrangement on the ground that they had an investment in the property.

And the same argument, your Honor recalls, was made with reference to the justification for the restrictions on the L-O type of arrangement.

We direct your Honor's attention to Exhibit 28 in the record, where one of the operators under the 3-C type of arrangement notified the company that he wanted to cancel his lease, that is, the underlying lease, and this exhibit, which is a company memorandum, reports this request. And on April 27, 1949, Exhibit 28 shows that Mr. McCracken who purchased the property subject to the lease—that would be the underwriting lease in the 3-C deal—

> "just recently, Mr. McCracken advised our people that [fol. 3390] he intended to serve us with a notice to relinquish our lease inasmuch as he wished to put in another brand of gasoline and operation the location as a cut-price station."

And then the memorandum goes on to say that:

> "This is the first time that I recall that we have been faced with a test on our 3-C proposition and while I recall from past conversations with you that it is extremely doubtful as to what extreme we would go to enforce this paper, nevertheless, I wish you would advise me just how far we can go and what reply we should make to McCracken when he serves us with a notice to vacate."

And then Exhibit 28-A contains the reply to that letter, in which it is pointed out:

> " 'If and when McCracken serves us with a notice to vacate, I think we should advise him that we have a lease which we intend to enforce. However, realizing our position is not too strong, it looks like it would be better business to attempt to work out something with McCracken on an amicable basis, not in any way indicating, however, that we consider our position a weak one.' "

Now, what is the import of those two documents? Simply this, your Honor: That we submit that this shows a recog- [fol. 3391] nition by the defendant of the fact that this ar-

rangement that they have set up here under the 3-C type of deal did not have, or, to say the least, there was a question of legality about that type of arrangement. But the control and the power to control it, when it was questioned, if it ever was questioned, was there.

And in an antitrust case we are concerned with the existence of the power, as well as the ability and intention of the holder of that power to exercise it where it does have the effect of restraining interstate trade and commerce.

And the other provisions that we have pointed to in our argument in chief all are along that line. An examination of all of these forms shows that it was the company's policy, the defendant's policy, and that it was expressed in the written forms of the agreement which they prepared, and there was substantially never any deviation from it. And, for example, the Exhibit 5-G, which is the last form of the sales contract, paragraph 1, while imposing an obligation upon the buyer under the arrangement of the 337 type of sales agreement, gives the seller or the defendant any number of outs if they care to exercise them for failure to deliver the gasoline contracted for under that form of contract. And I direct your Honor's attention to the language of that paragraph because it is, I submit, as broad an outlet from an obligation in any contract that I have ever [fol. 3392] seen.

I mention that again merely to point out to your Honor that I believe those provisions—and that is, perhaps, the weakest one of many that we have referred to in these written forms of contract—gives to the defendant, the other party to those contracts, the power to enforce restraint, and it has been exercised, as the testimony that I have just referred to is, and has been over these 3-C and 337 dealers.

And the final summary, of course, of that absolute exclusive nature of the gasoline and of this business is the testimony of Mr. King in which, on page 198 of the record, which was very early in the trial when we were discussing that, he said:

> "It is not our policy to supply"—— And I direct your Honor's attention to the word "supply." "or solicit the business of split pump service stations."

In other words, no station which would want to handle or which would desire to handle any other competitive products under the admitted policy of this defendant could do anything other than handle Richfield gasoline on a 100 per cent basis. And that is true without reference to the provisions of the written sales contract, and that was conceded by the testimony of Mr. King in t e record, 1864-5, when I specifically asked him whether or not it was not a fact that [fol. 3393] under these new forms of agreement, the Exhibit 5-G that I have just mentioned, and with respect to the 3-C sales type of contract, that in spite of the so-called minimum-maximum provisions, that it was not a fact that the other party, or the dealer, to that contract arrangement always purchased 100 per cent of the petroleum products, gasoline, from Richfield while it was in force, and he conceded that that was the fact.

So that in the antitrust laws, as your Honor has so well stated, we are concerned with not so much the form and the particular language that is used, but we are concerned with the device and the means and methods whereby that device is used to accomplish and effect an unreasonable restraint of interstate trade and commerce. And that is always the question that we come to in these antitrust cases, as your Honor has so ably stated in discussing the matter during counsel's argument in chief.

Now, just one final word with reference to the testimony on this independent status of operators. I direct your attention there to, again, the statement of Mr. King in Volume 2, page 223, where, after your Honor had asked him some questions concerning the independent Richfield dealers or the Richfield dealers, he stated:

> "We do feel, ourselves, that these men are operating on their own."

So that I do not know just what the test is, your Honor, [fol. 3394] that should be applied to determine whether or not these men are independent businessmen. Language, of course, may mean different things in different situations. But the fact is that, to summarize all of the testimony applicable to all three types of these dealers, whether it is one operating under an L-O arrangement or one under the 3-C

or one under the 337, that when you apply the microscope to see what they are really doing, I do not think it can be seriously questioned but that they are engaged on their own in an independent enterprise of buying gasoline and petroleum products and automotive accessories for the purpose of resale to the consuming public at a profit to themselves.

Now, that, in substance, I believe is what they are doing. And in connection with carrying on that business—and I submit that that is a term that is properly applied to those transactions—they engage in the purchasing of those products from this defendant, and they are buying them for the purpose of resale. They are not handling them in any sense of the term as an agent or as a factor or any other term that might be used to describe that relationship.

I submit that the only term that is properly applicable to that relationship is that of a "buyer and seller of products." And under the arrangement here we find that that buying and selling arrangement is confined and restricted to an exclusive agency.

[fol. 3395] And on the basis of the decision in the Standard case and under the appreciable segment doctrine, why, we submit that the market here—and there obviously must be that market—has been foreclosed to all competition by reason of these restraints imposed upon them through the understandings and contracts involved in this case.

Now, I briefly want to refer to a few other comments and arguments made by the defendant. They try to distinguish it from the Standard case. They have said a lot of distinctions, but your Honor well recalls that in that case for all of the arrangements Standard had what they called a market observer, I believe was the term applied, who went around to all of the types of stations to police them, to see whether their restrooms were clean, whether they wore uniforms, whether they wore the tie and the other things that they were supposed to do.

There isn't any difference in the regulations that this defendant tries to impose upon the L-O operator and the things that Standard try to do with the operators of all of its outlets.

And an examination and review of the record will show that many, many instances of the same type and character appear in the Standard case as appear here, and there

is not, I submit, any difference in degree between the two situations, and substantially none in fact.

[fol. 3396] Now, the defendant contends, further, that they changed their contracts. They say: Look what we did here with reference to the 3-C and the 337's in 1948.

Well, we submit that that does not make this question of restraint a moot one. The question is still there. What they saw fit to do in 1948 they can do again after the termination of this case.

The question that we are concerned with is as to whether or not there is still a restraint imposed and likely to be imposed unless this court acts to prevent it, and that is what the Government is asking this court to do in the event it enters a decree for the Government in this case.

I want to comment briefly—I had overlooked it—on this Exhibit X, I believe it was, which was a statement to the effect that the defendant had lost a lot of 337 stations. They say that they lost a lot of accounts.

Well, I direct your Honor's attention to the cross examination of Mr. Semple who made that exhibit, and your Honor will note that on page 1988 he testified:

> "Q. Do you know how many of these so-called lost accounts were terminated by Richfield?"

His answer was:

> "No, I do not.
>
> "Q. Did you try to figure how many of them were terminated by Richfield, in compiling these statis-
> [fol. 3397] tics?
>
> "A. No.
>
> "Q. Do you know how many of them were cancelled by the dealer?
>
> "A. No, that follows, because it would be the balance of the accounts lost."

Well, I do not think that follows at all from that arrangement. But let us assume for a moment that they did lose some accounts, what are the facts in this regard?

That is not the important consideration. The record shows that since 1940, through the period, I believe it was 1938 through 1948, which was the period used by counsel

for the defendant, that there was an actual increase of the 337 type of outlet from 881 on December 31, 1945, is the date I believe was used, to 1,361 on December 31, 1950. In other words, there had been a substantial increase of almost 500 of those types of outlets, regardless of how many they may have lost during that period, if you want to regard the cancellation by a dealer as a loss of that type of account.

But furthermore, the important thing, I believe, to note is this—and this is important under the Clayton Act provision in this case, the application of it—that these outlets have increased to which these contracts are applicable of the type complained of, and that the gallonage or the sales of gasoline to those outlets increase from 8,706,000 in De-
[fol. 3398] cember 31, 1945 to 13,480,000 gallons at the end of 1950. And the dollar volume had increased from $966,000 to over $2,117,000.

So whether they lost accounts or not, the fact is that Exhibit 26-A of the Government's case shows that these types of stations to which these contracts are being applied at the present time, and have been applied, have in fact increased over the five-year period, and that the volume of commerce has substantially increased, based upon the figures that are just submitted to your Honor which are in the record.

Let us just go briefly to the argument on the L-O type of stations. We submit here that there is no justification of the type that defendants have submitted here or the type of arrangement complained of. Their justification appears to be that they can't depend on independent dealers for their outlets, so they had to develop the L-O system.

Let us look at the record.

The record shows that even before they had an expansion for refining facilities during the war period—and they claim that was the reason they had to go out and develop further the L-O system—that this system had been in effect since 1937 and the only change that was made in that arrangement insofar as the written form of it was concerned was the insertion of the 24-hour clause into the sublease in 1943.

Now, the acquisition of additional facilities, whether it [fol. 3399] is refinery facilities or a discovery of new oil

fields which gives them an additional source of supply, obviously does not justify the creation of a restraint on trade and commerce if in fact that restraint is an illegal one, and certainly that is no excuse to make it a reasonable one under the Sherman Act.

They say further: Why, we have not increased the number of L-O stations since 1940, and that is a fact. The record shows that they had 1,412 or so in 1940. They had 69 less at the end of 1948, or 1,343 of them. But that is not necessarily the significant fact.

The significant fact in the record is that the gallonage of gasoline sold in these outlets, even though they had diminished in numbers, which represents the increasing market covered by these outlets, increased from over 94,000,000 gallons, a $9,000,000 volume of commerce in 1940, to 160,000,000 gallons and over $23,000,000 of commerce in 1948. Now, we submit that the justification of an investment in this property by the defendant is no justification in fact at all. That it is not applicable to the 3-C type of arrangement, and it is no more applicable to the L-O type of arrangement because, if they want to protect their investment, there is every opportunity given to them to do so by providing for the provisions, as they have in the lease which they enter into with the L-O operators. I submit that an exami-
[fol. 3400] nation of the provisions of that lease will show that this defendant has taken every possible precaution to guarantee a full and adequate protection to any investment that they may have in this property. So obviously that is no justification for the action which they have taken here.

Now, coming to the close of the legal argument in this case I would like to briefly comment upon the Sherman Act. Your Honor has done it and is thoroughly familiar with it. But your Honor is familiar with the fact that our country is the only government in the world, the only country in the world which has any Act comparable to the Sherman Act and the Clayton Act and the other forms of antitrust laws.

Our system is one under which we have full and adequate protection for the civil rights under the Bill of Rights and the Constitution, and maintain our democratic form of government. But it is not enough, the Congress decided, to merely provide for those.

It is necessary and equally as fundamental that we maintain and protect our free enterprise system. And it was on the basis of a recognition of that fact that our country is grown great and is what it is today, because it is founded on a free enterprise system, which is based in turn on a competitive economy, that the Sherman Act was enacted in 1890.

Congress exercised all of the power that it had over interstate commerce under the Constitution in enacting that Act, and the Supreme Court has many times so stated and [fol. 3401] restated. So that the scope and purpose of the Sherman Act is to maintain our system of free enterprise and our competitive economy, and the late Chief Justice Hughes referred to the Sherman Act as "a charter of freedom," and he says that it has the generality and adaptability comparable to that found to be desirable by any constitutional provisions.

But the purpose of the Sherman Act, in substance, is to maintain the system. And when we have the rights of economic power or the existence of that power, that in and of itself, of course, is no violation of the Sherman Act. But when you have the exercise of that economic power to emphasize restraints on our interstate trade and commerce, or foreign trade and commerce, then such action of the exercise of the power constitutes a violation of that Act. And that is true whether it is Section 1 or Section 2 or Section 3 of the Sherman Act.

In this particular case we have this oral arrangement tied in in the manner that your Honor has referred to, and the evidence shows the written form of lease. It is, in a sense, perhaps a part of it, but certainly there is no part of it except the 24-hour portion which deals with the trade and commerce here, and that is only a sanction to enforce what the Government contends is the illegal arrangement that is made at the time this written lease is entered into.

It is the exercise of persuasion or the coercive power [fol. 3402] lying back of that 24-hour provision that is the vice of this arrangement. And, as Mr. Justice Douglas stated in his dissent in the case of *Ford Motor Company v. U. S.* in 335 U. S., 343; 69 Supreme Court Report 93, at 103, when he was discussing and commenting upon the power of

Ford to force his dealers to take the Ford financing plan, the same as the Supreme Court had previously held was illegal in the General Motors case where General Motors had tried to force its dealers to take the General Motors Acceptance plan as part of the deal. And Justice Douglas said:

> "Due to force of power what dealer could afford to draw a nice distinction between persuasion and coercion."

And that is applicable to this case. What dealer could afford under most circumstances to draw a nice distinction between whether he should handle all of the products of the defendant on an exclusive basis, or whether he would try to do, even though he needed it to carry on his business, to handle some competitive gas under the counter?

The evidence here shows that some of them did, and that is part of our American tradition and of our free enterprise system, and it is a commend on their Americanism that they saw fit to do so.

But the point is that many others of the dealers did not see fit to do so because, as the testimony in this case shows, [fol. 3403] one of the dealers says they could not afford to take the risk. The power is there, and it is vested in this 24-hour cancellation clause. It is not expressed in writing, and that clause is only exercised, the evidence shows here, when the dealer is not delivering and complying with the 100 per cent arrangement that he has to enter into at the time he enters into the written lease.

Your Honor has referred to this power in the remarks which he has made, and particularly referred to the American Column and Lumber Co. v. United States, where a very potent and very effective statement is made on this question of power, which I believe is perhaps applicable to this case, as it is to all antitrust cases. There the court said:

> "Words of advice, seemingly innocent and perhaps benevolent, may restrain when uttered under circumstances that make advice equivalent to command, for the essence of restraint is power."
> At 122.

That is what the defendants have exercised and have hanging over these dealers, and which gives them the sanction to enforce this restraint. The 24-hour clause is the key to this whole situation. It may and probably would have a restraint without it, your Honor, if the written provisions were contained in the lease, as they were in the Standard leases and the Standard contracts. But they have not seen [fol. 3404] fit to do it here.

That is the only difference between the Standard case and this case. Standard did it in writing. They put it in the lease. Here the defendant did it orally, but in either event the restraint was there and it was imposed, and the restraint was unreasonable under the Sherman Act because it did restrict and close out and lock an appreciable segment of interstate commerce from all competition.

And it did have the tendency, as the Supreme Court, as well as your Honor held, to tend to create a monopoly in this field and substantially lessen competition.

If the Government is right in its position here, then this arrangement is not enough to get around the decision and the holding of your Honor and the Supreme Court in the Standard case.

If the Government is wrong, then I say to you that this is one of the most clever devices to circumvent a decision—not intentionally, perhaps—but in fact it will have that effect of circumventing a decision which has held in substance the same type of arrangement illegal under both the Sherman and the Clayton Acts.

So in closing, we feel confident, your Honor, that as you examine the record and go over these exhibits you can only come to the conclusion that you have here in substance substantially the same type of restraint, perhaps placed into [fol. 3405] effect and made operative in a little different manner. But you have the same type of restraint operating, substantially the same market and the same type of market as was present and was presented to this court in the Standard decision.

We feel that the relief requested here in the prayer of the complaint should be granted and that your Honor should find that the Government, in the interests of the public, the people of the United States, are entitled to a finding that a

violation exists here, and a decree which will effectively remove the restraints complained of.

The Court: All right, gentlemen, anything further?

REPLY

Mr. Paradise: I did not expect to have the opportunity of a reply, your Honor, but I would like to say a few words.

The Court: You have been on all this time. I think we ought to take a few more minutes and we ought to give you the last words.

Mr. Paradise: Thank you, your Honor.

I am somewhat puzzled by the Government's approach to this problem. They say that in the independent dealer situation, the 3-C deal and the 337 deal, that what is wrong in the contract is completely unimportant. What we must do is look behind the contract to see the practices.

In the L-O situation they say what is written in the contract is the only important thing. We must look to the [fol. 3406] contract and we must ignore certain things, and if things have been left out of the contract, that is where the grievance is.

If that is the Government's case, I submit that it is completely unintelligible to me. On the independent dealer situation, I submit that if you should look at the contract or look behind the contract and examine this record, there is not one iota of evidence, not one scintilla of evidence of restraint, and this is not a question of conflict of evidence. This is a complete absence of evidence.

The evidence is that all independent dealers—and when I say "all"—the testimony is over 75 per cent of them handle competitive lube oils and greases and TBA.

Getting back to the L-O's, however, because that is much more important, I can't see but what the Government's argument defeats itself. It drives itself into a complete absurdity.

The Government is talking about looking behind form to substance when they are talking about the independent stations, but if you will apply that same measure and equation to the L-O stations, the result is inescapable that what is here involved, regardless of what you call this relationship, there is no market.

The Government's argument defeats itself for this reason: The Government admits, as it must, that if the Rich-[fol. 3407] field operators of these stations be salaried employess, there would be no violation of the Sherman Act and no violation of the Clayton Act.

The Government admits, as it must, that if the men in these stations were factors or agents, and if, without a single change of any character, realistically, if there was only one bit of difference, if Richfield retained title and this was a consignment, then without the slightest change in the evidence as to any other matter or respect, the Government would admit and acknowledge, as it does, that there is no violation of the Act, because what a principal does to his agent cannot affect commerce.

We say that that is putting form above substance if that doctrine was ever applicable to a situation.

Here what we do to these operators is a matter not of power but a matter of right. These men know this before they come in, and that is one of the tests which has been applied in that group of cases to which I referred your Honor. I think that to restate anything further would merely be to labor the point.

The relationship is important only in respect that it must recognize and that a recognition of the relationship must show that this is the same, for all practical intents and purposes, as if these men were salaried employees, as if these men were agents.

[fol. 3408] There is no different effect on the Pennzoil Company whether this man is in there on a del credere agency basis, or if he is in there on a buy and sell basis.

In the Pictorial Review case they say that we recognize that this is a buy and sell, but they say that this is just a convenient method of bookkeeping. He could just as well be in there on a commission basis with a retention, that it won't make any difference.

That is the only difference the Government is complaining about. This entire lawsuit is just a tempest in a teapot. It means nothing if that is the only difference that they are complaining about.

I submit that that is the only difference, and that the question of whether or not Richfield pays social security taxes, whether Richfield guarantees these men a fixed income

by way of wages, whether Richfield guarantees or covers them by workmen's compensation is completely irrelevant. It is a non sequitur. It is an absolute non sequitur.

Maybe the purpose of the Government is to enforce social security laws. But if it is, they should proceed under the social security laws and not under the antitrust laws.

Maybe their purpose is to enforce minimum wages, but they can't do it and should not be permitted to do it under the disguise—and I say "disguise" advisedly—of enforcing the antitrust laws.

[fol. 3409] It seems to me that the position of the Government here is that if Richfield does not have these responsibilities, that it is worried about. And I say we have them. And I point to the last case, that Hayes case, in the California District Court of Appeals, that we have all the responsibility for the acts of this particular L-O operator, a man named Mr. Scavone, an L-O operator.

The Government's worry seems to be that if Richfield does not have these responsibilities, which it has, then as a penalty under the antitrust laws we can't control what should be sold in our own stations. If there ever was a non sequitur, that is it. Because the antitrust laws were not designed as a penalty to someone who failed to pay social security taxes, for someone who failed to maintain minimum wages, or for someone who failed to adhere to the workmen's compensation laws.

If that is what they are worried about, that should be prosecuted in some different form and under some different Act.

But I submit that there is no antitrust problem here involved.

The Court: All right.

REPLY

Mr. Dixon: The Government does not think it necessary to have the last word, but I do want to comment on what——

The Court: Just a moment. Go ahead. I am trying to get some books.

[fol. 3410] We feel that the position of the defendant is strictly that they are begging the question by the type of argument that they have made, because when they refer to these L-O stations as the defendant's stations, they com-

pletely ignore the fact that they have surrendered all rights to the control of those stations and the possession of those stations by the lease they have entered into with the dealer.

The Court: Just a moment. I want to call attention to one case. I don't know if it is a disadvantage or an advantage, but one of the incidents of a judgeship for so long a time as I have occupied it, during the course of which I have written many, many opinions, some 250 of which as a District Judge have been published, in addition to those I have written pro tem on the Court of Appeals, in addition to the many I wrote while a judge of the Superior Court, and which, of course, were published only locally, and also on the little Supreme Court, that is, the Appellate Department of the Superior Court, where I wrote opinions, and then I was pro tem on the Court of Appeals, and I wrote opinions there, and there are so many now that whenever a problem arises I find something that may bear upon the discussion. While we were discussing the problem of relationship, I happened to think of a case of mine, in which I wrote an opinion, involving the Wage and Hour provisions of the Fair Labor Standards Act. It is McComb v. Dessau, de-[fol. 3411] cided last year, and it is reported in 89 Fed. Supp. 295. We had the problem there once more of deciding what a particular thing is. The Fair Labor Standards Act exempts from its provisions small newspapers which have chiefly a local circulation, not exceeding 3,000. It is Section 213(a) of the Act. It has been increased now to 4,000, I think, but at the time it exempted from the provisions of the Act weekly or semi-weekly newspapers of less than 3,000 circulation, the major portion of which circulation was within the county where it was printed and published; as I say, that is Section 213(a) of Title 29. The section was amended, as I said before, and the minimum circulation was increased to 4,000. The defendant published four newspapers in four beach cities, "The Hermosa Beach Review," "The Redondo Beach Review," "The Manhatten Beach Review," and "The Palos Verdes Citizen." He tried to claim that each of these separate newspapers were separate units, as none of them had a circulation exceeding 3,000, and that he was entitled to the benefit of the exemp-

tion. This was the answer I made. It is very brief, and I will read it to you:

"The printing establishment of the defendants is conducted on a unitary basis. At their plant at Hermosa Beach, California, their newspapers are printed and published. The employees are employed, not by each newspaper, but by the publishing house. They [fol. 3412] are paid by the defendants regardless of the newspaper on which they work. In truth, all employees work on all the newspapers. The newspapers are published on different days and when the work on one is completed, the work on another is begun. No books of account are kept segregating the work or earnings of the persons employed in the production of these newspapers or apportioning their time or wages to a particular newspaper. So that each employee is employed on the production of all four newspapers. Assume, therefore, that if we were dealing with the different employees of each of these newspapers we would be compelled to reach the conclusion that they are within the exempt class. Nonetheless, the fact remains that we are dealing with the employees of the defendants and not with the employees of each of the four individual newspapers which the defendants produce. In sum, we have before us their employees and not the employees of the individual newspapers. The individual newspapers have no separate or distinct corporate or business entity. Each is merely one of the ramifications of the publishing business which the de- [fol. 3413] fendants conduct. The defendants have chosen to conduct their business in this manner, and to publish several newspapers as a unitary project,—with one management, under one business and editorial direction, and in one plant,—they cannot now segmentize it in order to claim the benefit of the exemption, which applies to small, individual newspapers having distinct being. As said in Bennett v. V. P. Loftis Co., . . . 167 F. 2d, 286, 288: 'If the declared purpose of the Act is to be accomplished, a project should be considered as a whole, in a realistic way; not broken down

into its various phases so as to defeat the purpose of the Act.' As all the employees participate in the production of all the newspapers, they should not be deprived of the benefits of the Act by an artificial separation and apportionment of their work to the four separate newspapers, which does not correspond to the actual conditions under which they are employed. Such a segregation would be the more unjust in a case of this character, because the newspapers are not only the product of a single enterprise, but they are, in truth, the same newspaper. They contain, except for an occa-
[fol. 3414] sional change, the same reading and advertising material, and only the change of masthead and the different areas of circulation make for distinctiveness. Such complete, unified operation calls for a like unity test in determining employee status. And the application of such test commands denial of the exemption claimed by the defendants."

I am not referring to that to decide the question one way or another, but to point up the proposition that when it comes to establishing what the relationship is between the parties to a transaction, we bear in mind the realities of the situation, not what the people call it. The second thing we bear in mind is the statute that we are interpreting. So here I was interpreting what? A statute of the type Mr. Paradise mentioned in his argument, where the question was whether the benefit of a statute should be extended to an employee. In view of the object of the statute, in view of the fact that I found a publishing company publishing four different newspapers in one plant, I had no difficulty in determining that, the two things being considered, the only realistic conclusion to arrive at was to treat the enterprise as a whole, because the employer had so treated it.

So the same principle underlies here. In order to determine the issue here, I must bear in mind, first, the type [fol. 3415] of statute we are interpreting. I am not interested in whether Richfield should pay social security tax for the L-O operators, or the others. To that extent Mr. Paradise is correct. I am not interested in whether they may be violating that law. I am not interested, furthermore, whether they are by their contentions subjecting themselves

to a possible contention on the part of the state agencies and the federal agencies that possibly, in view of their contention of complete control they had better make them the agents of the government for the collection of Social Security tax. I am not concerned in what effect a ruling upon the issue before me would have on collateral matters. The main concern is to determine whether the relationship which exists as to these three types of stations is such as to invalidate the restrictions which have been imposed on them.

As to the L-O stations, I think you are agreed with me that the question is purely one of law. I reached that conclusion after the first week, and I am glad you gentlemen have come around to my way of thinking.

As to the other two, I believe the question is not so much one of law as a question of fact, because, while it is true as to both of them, these restrictions or interdictions are oral, the absolute control as to the L-O station is admitted, while as to the others it is denied, and testimony has been offered directed at the contention that other than urging there is [fol. 3416] no compulsion and that no penalty is exacted, and there is evidence in the record to that effect, in fact, pictures have been produced showing that at some of the various stations covered the operators openly exhibited other products. So it is for the court to examine the evidence as a trier of fact, as to the types of stations, and determine whether substantial evidence exists, on which a finding could be based as contended by the government. But as to the other, the question is purely one of law, which I will work out with the assistance which you have rendered me in your argument and in the memoranda which you have filed.

So, now, gentlemen, I want to thank you for the fine and gentlemanly manner in which this law suit has been conducted. I think your co-operation in following the court's suggestions has resulted in concluding this case in less than half the time that was actually anticipated. If I were living in New York, in the Southern District, the Chief Judge would now send me on a vacation for four or five weeks. That is what they do. After a judge has had a long case, he gets time off, in addition to the three months that they actually close. But being in the Southern District of California, as I told you before, not with any complaint, I have to go on with other work.

I will say, however, that I will get to work on this as [fols. 3417-3420] quickly as possible, immediately, in fact, and try to formulate my thoughts. I do not think this case calls for the elaborate opinion that the Standard case called for, because the groundwork of the law is laid down in the two cases, so that a shorter opinion, not to exceed 15 or 20 pages, I believe, will be adequate to summarize my conclusions as to the problems here involved. I will get to work on the matter as quickly as I can. One disadvantage of having a reputation of working fast raises questions, such as that raised by Mrs. Brease, who has been reporting this case for some of their journals. She wanted to go away for a week's vacation, and she wanted to know if I would decide this case before next Wednesday, when she got back. I could assure her that there would be no likelihood of my deciding it that fast. You may tell your people that I work fast, but not that fast. Perhaps if I had no other work, and I could devote a full week to working on this matter, I could do it, but with other work I think it will have to wait a little longer.

So thank you very much, gentlemen, for your co-operation in the matter, and you will hear from the clerk as soon as the decision is made. I shall follow my usual custom, and either in the same opinion or in a separate one, decide the findings upon which any judgment I may render should be based, so that there will be no difficulty in preparing a set of findings that will conform to the conclusions I reach.

[fol. 3421] Los Angeles, California, Wednesday, August 1, 1951. 10.00 A. M.

The Court: Gentlemen, I called this hearing, more or less informal hearing, to discuss the findings and the proposed objections. Under our rules we very seldom have any hearings, because we have adopted the State practice, that is, allowing five days to the losing side for objections to findings, and ordinarily, if there are any suggested changes which the court approves, it is my custom to make the changes and rewrite the pages, if necessary, and notify counsel.

However, in a case of this character, and because I am leaving the city to go to San Diego for a two weeks session, I thought that I should inform you what my reaction is to the proposed findings and to the objections.

I think, on the whole, the findings conform to the court's decision, and I followed the precedent which I have established for cases calling for complex findings, by outlining certain specific findings as a part of the decision.

I follow that in many instances where I deem it advisable to translate, as it were, the legal opinion into specific findings, so there cannot be much argument about what the court intended to find.

I just concluded a civil antitrust case, which followed yours, and I am working on an opinion on that, and I am going to adopt the same system of determining specific [fol. 3422] facts in addition to giving a general basis for the conclusion.

I have studied very carefully the objections, and I think, aside from some specific objections to the decree, the objections are classified under two headings:

The first are specific objections, the objection of which is to place into the findings a theory of differentiation between the L-O and other operators. If I adopted the first group, the conclusions would not stand, and if we had such a thing in our procedure, as we have in the State Courts, and that is a motion for a different judgment, why, the moment I sign findings which incorporated these suggestions, I would have to give judgment the other way.

The second group is even more objectionable, because it places in the record the legal theorizing of the defendant, on the basis of which they sought judgment,—the theory that they were not in competition with anybody, that it was their market which they had created, and the whole object of the objections that begin at Subdivision B is merely to put in those facts upon which the argument is based.

I am not disputing that these facts are sustained by some evidence in the record, but it is not the object of the findings to set forth in detail the facts upon which the defendant's theory is based.

Having reached the conclusion that the L-O stations are independent operators under a leasehold, the only facts that [fol. 3423] should go in are the facts which are there, namely, the description of the instrument, the conditions under which they are held, and such facts as are referred

to in the opinion that show the actual relationship between the parties which lead to the conclusion.

I think the objection that was raised to the finding or conclusion as to the 24-hour clause is not well taken. The meaning and effect of the clause was before the court, and while it is true that the court's jurisdiction is derived from the fact that this action arises under the antitrust laws, if, as a part of the exercise of that jurisdiction, it becomes necessary to determine a question according to State law, the court has the right to do so, and the defendant having insisted and relied on the 24-hour clause as buttressing their theory of control, it became necessary for the court to point to the fact that by State law, as I understand it, that clause, if ever questioned, would not be held to be a 24-hour termination clause, but that the courts would determine the leasehold as being at least a leasehold calling for a 30-day termination clause, because that is the minimum rental period.

I do not think I want to say anything now about the decree, because the objections are limited to one or two matters that I think might be adopted for the sake of clarification, although it may well be that counsel are unduly [fol. 3424] alarmed by the apparent language, and, if necessary, I may before the hearing is concluded suggest some changes.

I thought I would express to you my views, and I will hear anything further you desire to say, or any specific remark regarding any specific objection. I think the object of objections to findings is or should be to make the findings conform to the announced decision by the court, and as the court has announced its decision in a very elaborate opinion and made specific findings, while counsel are free to insist on their theory, I think it is not the objection of findings to set forth facts that will sustain the other theory. The facts are in the record, and upon that basis the argument can be made to the higher court.

The findings in this respect follow the pattern which was followed in the Standard Oil case. There the defendants had a theory of competition which they sought to stress, namely, that there can be no monopoly and no control of the market when six or seven other companies in the same field are engaged in exploiting their own products through

some type of control over stations. I put nothing in the findings to that effect, although the facts in the record enabled counsel to place before the court their theory drawn from these facts.

For the same reason I am of the view that all the differentiations and all the theories which counsel desire to [fol. 3425] advance, which would distinguish this case from the Standard case, can be argued to the higher court on the basis of the record, and they have no place in findings the object of which is merely to state the ultimate facts on which the decision is based.

That is my feeling, gentlemen, and I will hear whatever you desire to say before we take up the specific objections to the form of the decree.

Mr. Paradise: As I understand it, if the court please, the failure to make particular findings is the equivalent of a determination that the facts so requested to be found are immaterial. I don't desire to press the matter. I am fully appreciative of your Honor's remarks.

The Court: Not that they are immaterial. They need not be set forth in the decision because, at most, they are contrary inferences which you would draw to support your theory, which I have rejected, that is all, and you are not entitled to that in findings. The record is there.

In other words, as a matter of fact, I could make a specific finding merely stating that the leasehold under which they operate creates the relationship of lessor and lessee—period—and let it go at that. As it is, the instruments themselves have been set forth. We have differentiated the three types of instruments, and I draw the same conclusion as to them, contrary to your theory, that the [fol. 3426] relationship established by L-O stations was tantamount to ownership. But both in the opinion and in the findings the three types are treated separately.

It is only for the purpose of the ultimate conclusion that they are considered alike, and the opinion treated them as such. As a matter of fact, the facts, as was apparent at the end of the trial, and as the opinion makes clear, as to L-O stations the question was a question of law, ultimately, because the control was admitted. So all we had to find there is that legally that amounted to a lessor and lessee relationship for a definite term, and that, in my view, they

are just as much independent businessmen as were the Chevron stations the court considered in the Standard case. And that is all. That is why, that being a question of law, the only thing that is necessary for the purpose is to set forth the type of instrument, the standards, policies, and then the facts that for certain purposes, such as social security, income tax, employer's liability, and the like, these people are not considered as employees. That is more or less of a negative findings, but it is one that should be considered in conjunction with the wording of the lease. So that is my entire conclusion.

To illustrate, let's take your first objection to the definition of "independent operation," which appears under "B." That is merely a general statement which defines [fol. 3427] "independent operator" as the operator of a service station who operates said service station as an independent business enterprise and not as an employee or agent of Richfield. Nothing should be added to that. The objections raise again the theory of the defendant that there is no distinction between the two and, also, that service stations are not a legitimate market, which is a theory of the defendant which I have rejected. And if that were all, it might be argued that it is all-inclusive, but later on the three types of contracts are set forth specifically, the basic instruments which relate to them are set forth, so that it is not necessary in every one of these findings to counteract by giving the theory on which a contrary finding might be based.

And that is typical of the first group of objections, and "B" I have already indicated have no place here under any theory. That is my reaction to them, and I have studied them very carefully, ever since they were filed last Thursday or Friday, when they were lodged here. They were lodged the 27th.

Mr. Paradise: May I add one word to that, your Honor?

The Court: Yes.

Mr. Paradise: I am appreciative of the court's statement as to the fact that certain of the objections in the first group, and that is to say, the objections to particular findings,—that a portion of those may relate to the theory of the [fol. 3428] defendant as set forth during the trial.

However, there are included in this Group A Objections

to Specific Findings matters which are not a matter of theory, and are solely a matter of fact, and I should like to pick out the particular ones in that category and suggest that there is nothing in the record to support the proposed finding in that regard.

Not only is there no evidence to support it, but the evidence, the only evidence, is directly contrary to the findings, as proposed.

Now, while there are objections to several of that nature, the objections fall into rather a limited number of types. I refer particularly to all findings pertaining to the existence or nature of oral agreements or understandings between the defendant and any 3-C dealer or any 337 dealer.

Now, in making this explanation of the objections, I deliberately do not extend that objection to the L-O operator, because it may be perhaps a matter of language whether the oral discussions relating to the various conditions under which the L-O operators are permitted to operate the station are a matter of agreement or understanding, or a matter of condition. But when we limit this objection to the matter of the 337 dealer and the 3-C dealer, both of whom own or control their own station, and do not lease them from Richfield, then as to the suggested findings or conclusions per-
[fol. 3429] taining to the existence of an oral contract or agreement between the defendant, Richfield, and any of such dealers, I submit there is nothing in the record to support any such finding.

The Court: That is your conclusion, but I reached an entire- different conclusion. In other words, I realized that there was strength to your argument, and you will note that I referred to the fact in the opinion. I said that you had categorical denials from those in charge that no such instructions were given. I was satisfied, however, from the entire record that there was coercion, and, furthermore, there is this: If, as a matter of fact, these acts are sporadic acts, for which you have no responsibility, you cannot be harmed by any finding as to them. If they do not exist, you are not bothered.

Mr. Paradise: If the court please, there is no finding in the argument presented by the government that there was coercion. That isn't what they were complaining about. There was no problem of coercion. Here is the suggested

finding that there was an oral agreement and understanding at each of the 337 dealer and 3-C dealer stations. I am satisfied there is no such proof.

The Court: I am satisfied there is, or I wouldn't have made the statement. As a matter of fact, it gave me a great deal of concern. I worked awfully hard on it, and you gentlemen don't know how many hours and how many nights [fol. 3430] I spent on it. Sometimes I think I ought to keep cases under submission longer, because counsel think I work regular hours when I get them out. But you ought to ask the janitors around here or check the book at the entrance to the building, and you would find that sometimes I do not leave the court house at night. For instance, not so long ago I met one of the newspaper men on Saturday morning, and he asked, "What are you doing here on Saturday morning?"

I said, "This is still Friday for me." I hadn't left here on Friday. I was just coming out.

The opinion is the result of a lot of thought, and, as you are all informed, I have no assistance at all, because I have no law clerk. The only assistance I get is that occasionally I ask Mr. Childress to come in and help me wade through exhibits, and things like that, which he does very competently when I want to check my facts. And, of course, in all of these cases you have to find a general fact from sporadic incidents, because it would be impossible in a case of this character to produce evidence to show an actual conversation and agreement with anyone. Courts are not required to do that, and when you are satisfied that a pattern exists you can generalize. The rest is a matter of argument. You may argue to the higher court that perhaps the incidents were not numerous enough to warrant a finding, but that goes to the basis of the ultimate fact.

[fol. 3431] As I said before, from a practical standpoint you cannot be harmed by a general finding, if, as some of your witnesses claimed, there was no such coercion or agreement as to these two types of operators. So ultimately we are again confronted with the problem that I am not required to put into the findings facts which would invalidate my conclusion.

Mr. Paradise: Then, I take it the court would not be interested in further argument concerning that?

The Court: Oh, I have the entire morning for this. All of you gentlemen know me well enough not to be surprised at my technique. Instead of just letting you talk and then rule, I told you that I had read the objections, as I have indicated by the nature of my remarks, and that I do not think that the objections are well taken, and the only specific thing as to which there might be argument is some of the things you complain of in the decree.

If you have any other matter you want to call to my attention, I will give you my specific reaction to that. I am not trying to curtail your remarks. If you can point out any other matter on which you think there is room for—not a change of attitude, but for a change in the form of the finding to support the judgment, I will be glad to have you point it out.

Mr. Paradise: Well, as an additional illustration, then, if the court please, and I have forgotten at the moment [fol. 3432] the precise numbers of the objections which relate to this, but it is the findings with respect to the effect,—not the purpose of intention or the nature of the agreement, but the effect of this so-found oral agreement or understanding on the 337 and 3-C dealer.

The finding is made, and if the court will forgive me a short moment, I will find the precise findings.

First, I am looking at the last sentence of finding 26, the objection to which is contained in Defendant's Objection No. 39. The finding is made that:

> "The painting agreements and the oral agreements and understandings supplementing the same have had the intended effect of shutting out all competition for the petroleum products and automotive accessory business of the 337 independent service station operator."

Our objection is stated in Objection No. 39, that there is no evidence to support such a finding, and that the only evidence in the record is precisely to the contrary.

The Court: There, again, your objection is based upon your theory, which I did not adopt. Your theory was that these are straight painting contracts, and I hold, and I said that in plain language, they are merely a subterfuge to get control, because you are not in the business of painting service stations, and that they were a part of a scheme de-

[fol. 3433] vised—and I used the word not in a derogatory sense—apparently, not to comply with the Standard Oil decision, but to get around it. That is perfectly legitimate, just as the Supreme Court has said it is perfectly legitimate for any taxpayer to try all honorable and honest means to try to reduce his taxes, and that it is perfectly legitimate for any businessman to devise a practice which he thinks conforms to the law. But when confronted with a contract which speaks of painting, I had to put it in its proper perspective, and my conclusion was that it and the other were merely a devise so that control over the products that were sold there might be exercised. That finding was necessary in view of the conclusion that I reached, and I said in the opinion that this painting agreement, taken along with the minimum requirements contract, which is for 80 per cent of the actual requirements, all of that taken together, indicates that was the purpose.

So here again what you are objecting to is my conclusion. I am satisfied that the conclusion is correct, or I wouldn't have gone to the trouble to write an opinion. I could have called you in. In fact, I had a notion to do that, to just call you in, as I do at times, and just go on and talk for an hour and tell you what my conclusions are. I do that many a time in a complicated case, to save myself the trouble of writing a formal opinion. But I thought I indicated very [fol. 3434] clearly all of the fundamental legal problems that needed discussion, and when I started out I said to my secretary, "We are going to write a short opinion," and as it kept growing and growing, she said, "What do you mean by 'short'?" The first thing that gave her cause to remark was when I said, "I want you to use two books." Two books means a formal opinion, because she writes the text in one and the footnotes in the other, and whenever I do that, it is going to be a complicated matter. In a simple opinion we do not put the footnotes separate from the text, and we just throw them in. But I felt, in justice to the earnestness of your contention, that every one of these matters should be treated with, and I thought I treated them very fully, and expressed the basis for my conclusions.

Mr. Paradise: Now, as I understand your Honor's remarks, your statement concerns the findings that you have made as to the purpose of the adoption of the painting

agreement. However, the objection to which I am directing the court's attention is not as to the purpose, but as to the effect, and as to the effect, the evidence in this case, I should like to mention it is my sincere feeling, does not sustain the statement as to the effect.

Now, I am not talking about the statement of the purpose of the painting agreement, but as to the effect. There is no testimony—all of the government's competitive witnesses [fol. 3435] who testified testified with respect to competitors' efforts to sell in L-O stations. This finding to which I am not objecting pertains to the independent stations.

The Court: I am satisfied there is enough evidence to show that the effect was to shut out competition. As I found it, I had to make the finding. Otherwise there would be no violation of the law.

Mr. Paradise: I agree.

The Court: Thank you for your forthrightness. You see, I got an admission from you now that if I made this additional finding, I would have to turn my judgment around.

Mr. Paradise: That is not an admission, your Honor. I proclaim that.

The Court: That is all right.

Mr. Paradise: May I also mention to the court, before proceeding to our objections to the form of the decree, the particular objection No. 25. That is, I think, that the defendant is entitled to a true finding with respect to the 3-C contracts. The finding, as presented and as proposed, indicates that the form of requirements contract has been in effect during the period from 1945 to the date of the trial, which, of course, is not the fact, and is contrary to the stipulation of facts and is contrary to the undisputed evidence that the defendant changed all its contracts and, therefore, wrote another one immediately following your Honor's de- [fol. 3436] cision in the Standard Oil case, and that all of the contracts which were in existence at that time have been amended and modified to remove that feature of the agreement, with the exception of four.

Now, that is the undisputed fact, as well as the stipulation of fact, and the undisputed fact is also the reason for the defendant's change, which was a desire to comply with the laws announced by your Honor, and contrary to the findings as proposed by the government here.

The Court: I cannot see any objection to finding 14, because regardless of the terms, this tripartite set-up exists as of today, so that any change that may have been made is a question of argument. All that this said is that since that time a three-way arrangement exists as to these stations.

Mr. Dixon: They will exist for a specified term, which may be as long as 20 years in duration.

The Court: I can't see any objection to that specific finding.

Mr. Paradise: The objection, your Honor, I think is the reference to the fact that all of these arrangements which have been in use since 1945 to the present time are in particular exhibits, and, as the court knows, that is not true.

The Court: The reference to exhibits is merely a matter [fol. 3437] of illustration. It does not bind anyone to the particular exhibits. You might strike out the words "represented by plaintiff's exhibits" in one place or the other, but if you did that, you would have to search the record for the various forms. That can be done in an argument. It merely says that that exhibit is a representation of the form. I think Mr. Dixon used a very mild verb there, one that didn't tie it. He didn't say that is the exclusive form. He says that a sample of it is found in Exhibit So-and-so. That does not tie it. Otherwise he would have to give the various evolutions through which these forms may have gone, but that is all a question of argument.

Mr. Paradise: It may be a question of argument, your Honor, but the government knows that is the fact, and as I interpret the law on the significance of findings, the purpose of findings is for the facts, as found, to be available to the reviewing court, so that it does not have to search the record as to uncontradicted evidence.

The Court: It is not the object of findings to summarize the evidence in a case of this character. There are nearly 3,000 pages of record, and through Mr. Childress' famous scheme of subdividing, we never know the number of exhibits. I think your friend, Mr. Dwight Whitney, ought to be informed about this, because this hides the number of exhibits. It makes it impossible, unless you count them, to [fol. 3438] know exactly what you have. So I think the findings here have given the basic instruments, where they are necessary.

Now, when it comes to instruments, you want to bear this in mind, when it comes to findings. The interpretation that a trial court places upon a written instrument is not binding on the higher court unless there is evidence dehors the record, except they give us this sop, if I may use that word, they say if our interpretation is not unreasonable, they will not disturb it, but they determine whether it is unreasonable or not.

It is like telling us, as they do in a patent case, that a finding of patentability is a mixed question of law and fact. But I would like to see any decision in the last 20 years by the Supreme Court of the United States or by the Ninth Circuit where they have observed that rule. That falls down. I myself wrote an opinion in the Borax case for the Court of Appeals, and I pointed to the California law, which says that if the interpretation if not unreasonable, they will follow it. But they are not bound by our interpretation of a written contract. So that what I am always anxious about is this, and I have sought to avoid it in all cases, even when I have written the findings myself, as I have. In fact, in one of my best known cases I wrote the findings myself. That is the case of Brooks Brothers v. Brooks Clothing Company, where I deprived Brooks Clothing Company of the right [fol. 3439] to use the word "Brooks." It cost them $800,000 to buy the good will of Harris & Frank and to change the name for some fourteen stores, as a result of that opinion. In that particular case counsel were so far apart as to what should go into the findings, and I happened to be in Fresno, so I called in my secretary and I said, "I used to teach the subject. I want to see if I have forgotten how to write a complete set of findings."

I wrote a complete set of findings from beginning to end, and the judgment, and sent the signed findings with my compliments to counsel. That isn't the only case in which I have done it. I have done it in others. That was the most important case, and the highest compliment that the losing side paid me was that I didn't sink them in the findings. You know that expression, and I am very careful to see that the losing side is not sunk in the findings, because you can do that. You can do it very easily. I had a very simple matter recently, and merely to indicate the technique, and I am speaking of my own, because that is all I

know about, I don't know what other judges do,—I recently had a review, a bankruptcy review. I had reversed the referee, and as many a time happens with an expert, your bankruptcy experts don't know anything other than bankruptcy, and they don't know pleadings, just like patent lawyers don't know any law outside of that, most of them, anyway, and they don't know pleadings. They don't know [fol. 3440] how to phrase a pleading, if it is in any way different. So they brought me a modification of the findings approved as to form. But I wasn't satisfied with it, because they had failed to make a specific finding that I had set forth in the opinion that I wrote in the case. It is a very important case. It involved the question of fraudulent conveyance applied to a homestead, and I held that it did not, because you cannot defraud your creditor. In this case the homestead had been declared four years before, a perfectly good homestead, and then an attempt was made to convey the property to a daughter, and Judge Mathes had held that conveyance in fraud of creditors. Whereupon I held that revived the homestead, because the conveyance, even if it had not been set aside, would have had no effect on it, because you cannot be defrauded by having property as to which you have no rights put out of your reach. So it was very important to make a finding that the bankrupt had asserted her right in the bankruptcy proceeding, when she appeared in answer to the order to show cause that the trustee had caused to be issued quieting her title.

I wanted the upper court to know that I considered the answer, inexpert though it was, written without the aid of a lawyer, an assertion of her title, and in order to base on it the argument which I made in the opinion that there is no time limit as to when the right to exempt property may be [fol. 3441] asserted, and so long as the proceeding was pending and the woman was in the penitentiary, anyway, there was no such thing as a waiver on her part. It wasn't there. So I took the last two pages and I put in a specific finding to that effect, and then sent that to the attorneys.

I am trying to give you that as an illustration of how careful I try to be in these matters, to see that the factual basis for the decision is before the Appellate Court, and more than that is not right or proper to put in. I think these findings are a little too long. As a matter of fact, I

didn't think it was necessary to put in as many of the instruments as are in it.

Mr. Paradise: Now, then, without regard to any of the objections to the proposed findings, or objections based upon failure to find, which your Honor has indicated you didn't want to hear any further statements on,——

The Court: What I am doing now is indicating to you specifically my special reasons for feeling that the specific objection which you pointed out is not valid. I have already indicated generally in the discussion why I disagree with the entire theory of the objections. You have pointed out finding 14, and I have tried to indicate to you that it is a correct finding, that it does not tie you to the particular exhibit, and said it was represented by that. You can show that it was gone through various forms. You have that [fol. 3442] argument. If the argument helps you, why, you are welcome to it. He has not foreclosed you. That is why I say that. He has not foreclosed you by the way he has worded it. He said, "Illustrative of," and he said, "As illustrated by."

I like that word "illustrative." You will notice in my opinions that I use it a good deal. I like it. It is a practical method of pointing to some specific thing as illustrating what you are talking about, and giving a specific example is very helpful. And that is all he says, that in that finding the particular exhibit is illustrative. He does not strike out your other exhibits. Your other exhibits are in. One thing that I did in this case, and I did it also in the Standard case, I did not exclude any facts which lend themselves to your argument, even though I did not think they warranted the particular inference that you wanted to draw.

So you have all the data relating to the amount of money. In fact, I used one of your summaries, but I get mixed up on figures. I am not very good at figures, and my secretary, Mrs. Hicks, will not mind if I say she is not either, and that is one thing that we are caught with occasionally in these opinions involving figures. Dropping $100,000 or a million gallons means nothing in our young lives. They just fall off.

So Mr. Dixon has called my attention to some of the [fol. 3443] errors in the figures, and I have a list of those, which I am holding to make the correction on the proof

when it reaches me. But I even put in the millions of dollars you had spent and had invested in these stations, so that the facts are there. I do not think they call for a different result, but if the Supreme Court should want to consider that, the facts are there.

It is not necessary to put them in as you seek to do by your group of objections designated as B. The facts are in the record, and they can be used, and if the court wants to differentiate, and if they want to do another Columbia Steel case, it is all right with me. In the Columbia Steel case they did a lot of differentiating. Except perhaps for Professor Toulin who is a very partisan writer, and who starts out by saying he is going to give "heck" to all the courts because they misinterpreted the law, I don't think any writer thinks that the Columbia Steel case is anything but one of those unusual things that sometimes happen, and that if the courts want to do something about it, they will stress the law later on.

Now, the facts you refer to are in the record, but they have no place in the findings because they would warrant inferences contrary to the findings, and a set of findings should be consistent. They should not contain contradictory facts, even though the contradictory facts are in the record. [fol. 3444] Mark you, I am not saying except as to inferences that these specific facts that you refer to are not facts in the record. They are there. I considered them either immaterial or I drew an inference from other facts contrary to them. They have no place in my findings.

If they invalidate the findings, that is a consequence that any judge must face, and there is nothing in these findings that prohibits you from arguing the full force and effect of any of these facts, which either are undisputed, as you claim, or warrant a different inference than the inference which I have drawn.

Now, if you have another one that is illustrative, why, all right. If not, we will go to the decree.

Mr. Paradise: The objections with regard to the decree are made in part III of the objections, and I will not proceed to argue orally any of those except those in which the court indicates it is interested.

The Court: Just a moment. Objections 1 to 5 are not well taken because there they merely carry out the general

objection which was contained in the objections to findings. The first one as to which any question has arisen in my mind is as to paragraph VI. I do not read it the way you do.

Mr. Paradise: That is paragraph VI of the judgment?

The Court: Yes. It is objection 5 on page 36 of your objections. I think you are too worried about that language. [fol. 3445] The language of an injunction must be positive. Then the suspension clause which I put in, as I did in the Standard case, the moment you appeal will stay the effect of all of this.

Mr. Paradise: I was wondering if you were talking about paragraph VIII, which is the stay. We had objections to both paragraphs VI and VIII, but for entirely different reasons.

The Court: What is that? Just a minute. Yes, I guess I was looking at the wrong page. I had in mind VIII. Let's get back to VI, then, because that may warrant some discussion.

I cannot see any objection there. The Supreme Court has repeatedly held that where a practice is condemned under the antitrust laws, the court, in order to assure the enforcement of the decree, may police it. And all I have said here is that the 24-hour clause is declared invalid, and the cancellation clause can be used only for breach of the covenants in the lease, and that they request a copy of such cancellation, as an assurance of policing, as it were.

Mr. Paradise: Well, doesn't it go far beyond that, your Honor, in this respect:

The first sentence of that paragraph invalidates the 24-hour clause, and states that the 542 form of lease cannot be terminated on less than 30 days' notice.

We objected to that both in the conclusions, as well as in the judgment, on the ground that that is beyond the juris- [fol. 3446] diction of this court, under the State law.

The Court: No. I have a right to do that. I have a right, as a part of the equity powers, to declare that those leases are 30-day leases, at least.

Mr. Paradise: I understand your Honor's ruling on that, but——

The Court: And that is what this decides, and the provision for policing is legitimate. You gentlemen should

look at the decree that I have been wrestling with in the last case, since you left.

Incidentally, I lost all the time that I gained in your case in this other case, because it ran way beyond what I expected it to take. So you see, gentlemen, that any gain in time does not enable me to play golf. It merely means I have to give it to another case. But you ought to see the provisions the government put into the Paramount decree. In fact, the Supreme Court not only allowed them, but they even suggested more. In the first place, the question of due process does not enter into antitrust, because the antitrust laws are passed under the plenary power of Congress to regulate commerce, and it has been stated that the due process clause does not even apply. I do not go to that extent, and I think I have either in your opinion, or in the opinion I am writing now, pointed to the fact that when it [fol. 3447] comes to due process, all that it means is this: that in view of the fact that the Congress of the United States can actually exclude entirely a product from commerce, then the question of due process loses its entire significance, because if you can exclude a product, you can regulate it to death, as it were. So the court, in upholding the law, can invalidate contracts, because it says so in so many words.

Mr. Paradise: Perhaps I haven't made my objection clear. My statement concerning the 30-day clause was merely in an analysis of paragraph VI. The point of this particular objection under objection 5 relates most particularly to the second sentence of paragraph VI, which your Honor has before you and which has this effect: it states that the lease cannot be terminated except for a breach of the written covenants contained in the written lease. That is the 542 form.

Now, as your Honor will recall from the evidence, there are a multitude of matters discussed and told to the operator before he is permitted to occupy the premises. There are matters of hours of operation. There are matters of the wearing of uniforms. There are matters of his dealing with the public, and his following Richfield's procedures and practices with regard to the servicing of cars, and a multitude of things over and above, and including the matter of exclusive dealing.

Now, the only thing that is contained in the written [fol. 3448] lease,—there are only two effective covenants in the written lease, effective for practical purposes. One is a provision for the payment of rent, and the second is a provision for the maintenance of the property. The government's form of the decree,—and I draw your attention to the time of the argument, at which time the court told me not to worry about the form of the written decree, but I am worrying now. The government states in this paragraph of the judgment that that written lease can only be terminated for a breach of the provisions of the written lease, and, as I say, there are only two effective provisions. The court will also recall the undisputed evidence that this property is leased to this operator at less than its fair rental value.

What is the effect of the decree proposed by the government?

Mindful of the fact there is no duration, no stated term to the 542 form, and as the government states in one of its findings it has unlimited duration, which means it goes on forever until terminated by 24 hours' notice, which either side can give, the effect of this provision is that so long as this L-O operator is in there and paying the rent called for in the lease, which is two-thirds of the fair rental value and not more than that, and two-thirds of what Richfield is paying to the property owner and not more than that in those situations where Richfield is leasing the [fol. 3449] property, this particular man can hold the property forever, whether he sells Richfield gasoline or not. I say that is more strenuous than any divestiture decree that any court has framed in any antitrust case, even where conspiracy exists.

The Court: I think you are undul- apprehensive, and I cannot see how this situation which you envisage can arise. In the first place, I have found that there were oral understandings which were illegal. Now, the only thing the government is concerned with is the illegal undertakings. We do not by the findings or by this decree determine that you cannot discharge the man, say, on the ground that his deportment is bad. The object of this law suit is merely to put an end to conditions which are violative of the law, and I think you are much better off with the form in there than

if he had put the words of the opinion in there, that you would like him to put in. At times it may be advisable to put language of an opinion in findings, but an opinion is an argument, a rationalization of the court's conclusions, and the language of the opinion may not always be appropriate in a decree. I cannot see that this would affect in any manner any right that you may have. If you should give notice that, "You are conducting a filthy station," or "You don't look so good on the job," or "You are not clean," and so forth, "and for this reason I terminate this station," I do not think that anybody could contend that you cannot do [fol. 3450] that under this decree.

Mr. Paradise: I take it your Honor agrees that should this decree be entered that a termination of that sort would be perfectly legal and not a violation of the decree?

The Court: Certainly. The only violations we are concerned with are violations of the antitrust laws, and the only conditions over which we have control are those. The only object of the finding as to the nature of the decree is to see that the termination clause, as it presently exists, is not made a device to cover up the forbidden practices.

Mr. Paradise: Yes, but doesn't the language, your Honor, read fairly and reasonably, go tremendously further than that? It says that the 30-day cancellation privileges,—mind you, the lease calls for 24 hours' notice, and it calls for the exercise to be made by either party at any time for any cause whatsoever, and is not limited to any particular cause, and is terminable without cause, if your Honor please. But this paragraph of the decree says this, "Such 30-day cancellation privilege"—which the government has invented for the benefit of the defendant, and it isn't in the lease—"may be exercised"——

The Court: I invented that. That was my brainchild. I invented that.

Mr. Paradise: (Continuing)—"may be exercised by defendant"—and from here on is the language criticized—[fol. 3451] "only for a breach of any of the written covenants contained in any written lease . . . "

The written covenants, as I pointed out, are the payment of the rent and the maintenance of the property.

The Court: Let's pass to another one. I will hear from

Mr. Dixon on that. Let's have the other one, and then I will hear from him.

Mr. Paradise: Now, we object——

The Court: We are talking about VI now?

Mr. Paradise: Yes. We think that the last sentence of the provision is unreasonable, but I will pass that, your Honor, and to get to the much more important objection, that is, to the concluding clause of paragraph VIII, which puts into effect immediately and notwithstanding any appeal all of the restrictive injunctive provisions of paragraph VI, which we understand is contrary to your Honor's decision.

The Court: That is VIII?

Mr. Paradise: Yes. And I am referring to the defendant's objection No. 7, which pertains to paragraph VIII of the judgment.

The Court: Well, I will hear from Mr. Dixon on that. I wasn't quite sure what he meant by that. There might seem to be a contradiction of language. Maybe he can explain that. Let's go to the next one.

I think that is about all. You don't like the judgment. [fol. 3452] I know you don't. This is off the record.

(Statement off the record.)

The Court: I think those are the only ones, unless you have some others that do not look serious.

Mr. Paradise: May I add a word concerning the concluding objection, No. 9. The government has asserted throughout this litigation that the issues are determinative by the Standard Oil decision, which we have disputed. Nevertheless, if that is the conclusion of this court, we feel that the judgment should not be more onerous than was the judgment in the case of the Standard Oil Company.

The Court: That is that clause in there. Yes, I will hear Mr. Dixon on that. There are those three matters. I notice that Mr. Dixon has the record in the Standard case, so we don't need to send for it.

Mr. Dixon: I wondered if your Honor wanted to give the reporter a recess before I start.

The Court: Yes. We will have a short recess.

(A short recess was taken.)

The Court: All right.

Mr. Dixon: May it please the court: I will direct my argument and comments solely to paragraphs VI and VIII of the proposed decree, and will comment upon the objection made by the defendant with reference to a part of the language of paragraph IX of the proposed decree.

[fol. 3453] The Court: There is one thought occurred to me during the recess. I had not thought of it before, but in going back, I am trying to think of the reason for putting that in, and, if I remember correctly, it is caused by the fact that unlike Richfield in this case, Standard did not admit the existence of this absolute exclusive dealership, so far as the Chevron stations are concerned. For that reason, and to protect them against possible prohibition of any split-pump policy, I think this was put in. I can't definitely remember how that got in there. Do you remember whether it was in the original, or whether it was put in at their request?

Mr. Dixon: You are speaking now——

The Court: Of No. IX.

Mr. Dixon: Of No. IX. This No. IX is a standard form, as your Honor suggested, of a policing provision, which is inserted in all consent decrees, and is offered by the government in all their judgments which are submitted and filed for the court to consider.

The purpose of the provision, which the defendant complains against in paragraph IX, is solely to police the judgment. It was not in the Standard decree, the Standard decree being limited, insofar as that language is concerned, to the part commencing with the language for the enforcement of the judgment, and from there on.

In other words, the only difference between this language [fol. 3454] and the language of the Standard decree is that it requires the defendant, upon the request of the Attorney General, to submit reports to the Attorney General concerning any matter necessary or related to the enforcement of the judgment itself.

The Court: That is all right. That isn't the point I have.

Mr. Dixon: I am sorry, your Honor.

The Court: The negative clause that they say was in the decree, the last paragraph. I am starting backwards. They have included paragraph IX of the Standard decree.

Mr. Dixon: Oh, I beg your pardon, your Honor. Yes.
The Court: And are seeking a similar clause——
Mr. Dixon: Oh, yes.
The Court: —merely that it shall not—
Mr. Dixon: I confused the government's proposed IX.
The Court: No, the one they got from the decree.
Mr. Dixon: Yes. That was contained in the judgment, your Honor, principally because of the existence in the Standard decree and in that case of the so-called TBA dealer type of contract, which in substance is not before the court in this case.

Your Honor will recall that under that type of contract Standard, in effect, loaned the dealer certain equipment, consisting principally of receptacles for the deposit of their [fol. 3455] oil, and their petroleum products, and other types of equipment, which bore the name of the Standard Oil Company, and description of its product contained in those receptacles or containers.

Now, in the instant case the Richfield Oil Company does not furnish, insofar as the record in this case is concerned, that type of equipment to any of the dealers that are being considered, insofar as the arrangements between such dealers and Richfield are concerned in this case. In other words, there is no bailment or loan of any Richfield equipment here to any of the so-called L-O, 3-C or 337 types of dealer, and for that reason this provision in paragraph IX, as suggested by Richfield, was not inserted in the decree which the government submitted for your consideration here.

The Court: All right. We will go back to No. VI and VIII. No. VI.

Mr. Dixon: Now, before I cover in detail the provisions of paragraph VI of the proposed judgment, I wish to state to the court, because it shows the difference between what the government is suggesting in paragraph VI, and what the government is asking for in the case which is pending against the Sun Oil Company in the District Court for the Eastern District of Pennsylvania, which suit was filed on January 12, 1950, and which involves, in substance, exclusive dealing type of arrangements between the Sun Oil Company [fol. 3456] and its dealers. In that complaint the government asked, as a part of the prayer for relief, in paragraph VI thereof, that the Sun Oil Company, the defendant, be

ordered to include in all existing and future leases of service stations operated by independent service station operators provisions for (a) a term of not less than five years; (b) a right of lessee to freely assign or transfer the lease to an independent service station operator of his own choosing; (c) a limitation of the right of the defendant Sun to cancel during the term for a breach of the reasonable covenants, such as illegal use, waste, abandonment of the premises, and for non-payment of rent; and (d) a written notice of not less than ninety days of cancellation to lessee.

In other words, in the case against the Sun Oil Company the purpose of paragraph VI of the prayer for relief was to make certain that the lessees operating under the various types of arrangements in that case could not be canceled out of their lease without there was a violation of the written covenants of the lease, and that written notice of intention to cancel such leases be given not less than ninety days prior to the actual cancellation covenant. And that, furthermore, in future leases, and even as to those leases which were then and now in existence, that the lessee be given the right to assign his interests in the lease to another operator, and that the term of the lease as to future leases be for a term [fol. 3457] of not less than five years or duration.

I have gone into that merely to indicate that in this type of case, of course, the purpose of the action is to remove the alleged illegal restraint which the government feels has been imposed upon a substantial market for petroleum products and automotive accessories, and that in order to remove that restraint it is necessary that the rights of the dealer or the independent businessman occupying these premises be protected against cancellation of his right, as lessee, for anything other than a valid reason for his cancellation, as exists in the lease itself.

Now, coming down to the instant case, paragraphs VI and VIII deal principally—at least a part of VIII—deal entirely with the L-O operator. Your Honor, of course, has found and knows what that arrangement is. There is a written form of lease which contains certain covenants against waste, and so forth, of the property that is turned over to the dealer or independent businessman lessee.

Now, the evidence in this case, insofar as it related to the tenure or length of term of the lessee under this type of

arrangement was that it went on almost indefinitely, as long as the operator complied with the policies represented, in substance, by the exclusive dealing type of arrangement of the defendant. In other words, as your Honor has found, that cancellation privilege was never resorted to,—there is [fol. 3458] no evidence it has been resorted to at any time for the violation of any of the written provisions of the lease itself, but generally to enforce the illegal arrangement, that is, the exclusive dealing arrangement that has been found illegal by your Honor.

Now, in order to secure effective relief under those circumstances, the government submits that the dealer who is now in possession of the L-O type of station under the lease, a written form of lease, must be protected against any exercise of the 24-hour cancellation clause from the time of the entry of this judgment; and, second, that he should be protected against any cancellation of his right of possession by Richfield for any alleged reason, which may be in fact a reason which is being used to or given to enforce the illegal arrangement.

In other words, the purpose of paragraph VI is to assure effective relief insofar as the dealer market is concerned on the L-O type of station here, as well as the others, of any cancellation of his right to possession for any reason which may bear in any way upon the illegal part of the agreement, which the defendant has been found guilty of entering into.

The Court: Doesn't that give them the immediate benefit of a decree which is not final?

Mr. Dixon: No.

[fol. 3459] The Court: But your clause VIII and VI go together.

Mr. Dixon: That is right.

The Court: But doesn't that, by giving it effect now, mean you are practically limiting the scope of the decree by forbidding at the present time a breach for conditions other than those in the written lease?

Mr. Dixon: Let us assume that paragraph VI and VIII go into effect, your Honor. What would happen, as the government interprets those provisions, would be that from the time the decree was entered and signed by your Honor that the defendant would be prevented from exercising the

24-hour cancellation clause contained in its present lease, for any reason except a violation by the dealer of the written covenants of that lease.

The Court: Yes, I understand that. But you are giving it the effect of a judgment. You are giving immediate effect to a portion of a judgment which has not become final.

Mr. Dixon: That is right, your Honor.

The Court: And an injunction of this character, unless you stay it, takes effect immediately, and the object of the stay is to allow a reasonable time for the benefit of an appeal. I am willing to maintain the status quo, if it can be done, but you are practically saying now to all these lessees: From now on you are working under a contract which has a 30-day limitation and requires notice, and it cannot be terminated.

[fol. 3460] Is it fair to the defendant to do that? It is not an appeal that he can stay by putting up a bond, under the law. The only way of not robbing the defendant of the right to appeal is to stay it.

You will remember I brought that in, and you will remember when we discussed it, it was a case of the judge telling the lawyers where the law was, and they wondered where I got it, and I showed them there was support for it in a decision of the Supreme Court of the United States. It is a very famous California case, a California water case, the Lindsay-Strathmore Irrigation District case, which, by the way, was tried by Judge Albert Lee Stephens when he was a judge of the Superior Court, in which the Supreme Court went to the law as it existed in England to determine whether you can stay the effect of a mandatory injunction that you yourself had issued.

So there is legal basis for doing it, but we are talking now of the practical effect. It would seem to me that we should not, as of today, change the contract, or if we do it at all, do not put in any way, and make them go to the Supreme Court and let them stay it, which is the only other alternative. But if we agree on principle, and I am satisfied on principle, that this is the proper way of handling it, and we did it in the other case, I do not see why we should put any part of the decree in effect at the present time.

[fol. 3461] Mr. Dixon: The difference between this case and the Standard case, from that point of view, your Honor,

is that the Standard case did not involve or contain in any of its leases or arrangements this 24-hour cancellation provision.

The Court: Regardless of that, I am pointing to the fact that if in an equity case, where you issue a decree of injunction, you do not stay it,—well, take the Lindsay-Strathmore Irrigation District case. That was a case where they held that the irrigation district had certain water rights against certain owners, and that was before the new doctrine had arisen, that a governmental body could not go to court without having a congressional Act behind them. At that time it was still proper for a governmental body to bring private owners into court and say, "Look. I have these rights, and I want them."

Now, after the court had held that they were entitled to those rights, they issued an injunction to prevent the defendant from diverting the water. Now, had they not stayed the effect of that injunction, an appeal would have been a futile act, because if they had not stopped them from diverting the water as of the date of the decree, it would not make much difference what would happen to the decree in the higher court.

So I am inclined to think that if the decree is stayed at all, it should be stayed as to all its clauses, and that [fol. 3462] can be done by putting a period after the word "determined," and then striking out the last three lines there.

If it were merely a case of maintaining the status quo, I could see the strength of your argument, but it is doing more. In other words, prior to the decree you are giving to the L-O operators the benefit of a termination clause, to which the higher court may say they are not entitled. In other words, you are extending the period as of today.

I am still satisfied that I interpreted the law correctly, and it is a very mild policing, and I am glad you called my attention to the other matter. I wasn't aware of some of the prayers in other cases, but I was familiar with what the courts have done by way of policing in the motion picture cases, and they are pretty drastic. So I feel that the interpretation of the contract was correct, and placing that clause in there is in accord with what I think the view of the courts would be as to the entire purpose of the instrument, because

if it is inconsistent, if the termination clause is inconsistent with the habendum clause, by all rules of interpretation the habendum clause would prevail, but there would be two clauses. Certainly, our system does not favor tenancies at will, terminable on a notice which is less than the rent reserve.

I could have given you a hundred cases on the subject.

The more I studied it, the more I found. In fact, the courts of California especially have gone very far in turning [fol. 3463] any of these tenancies at will into tenancies for a definite period, whenever they had the chance to do so. So I do not want to detract from the strength of my ruling, but I still do not see why we should give them the benefit of that at the present time.

Mr. Dixon: Your Honor, if this was the Standard case, where there was perhaps a question of determining for the first time the legality of this type of arrangement, the government would feel that the defendant should be given a full opportunity to have the final legality of that type of arrangement determined by the Supreme Court, and that a full stay in every sense of the term, in fairness to the defendant, of any order that the court might enter would be proper.

The government feels that that is not the situation in the instant case. This case was filed shortly after, as your Honor knows, the Standard Oil decision, but did not reach a trial and a judgment until about three years after the Supreme Court had finally decided the Standard case.

The Court: Let the record show that I was not to blame for that. As soon as it got into my court, I had you before me, and we set a date for trial.

Mr. Dixon: The case has certainly been expeditiously disposed of since it has been in your Honor's court.

The Court: We will all take the compliment, gentlemen. We deserve it.

[fol. 3464] Mr. Dixon: We are very grateful for the prompt consideration which your Honor has given this case, but I do feel that the legality, or, rather, the illegality of the practices complained of here have been and were thoroughly established by the Standard decision. Therefore, we have an adjudication, in substance, of the same question

three years after a final determination of that question by the Supreme Court in the Standard case.

Now, the government is not asking in paragraph VI that the provisions of this decree become immediately applicable upon signing without any stay. The government is asking in paragraph VI and paragraph VIII, when read in connection with VI, that one of the devices or the means or methods used by the defendant to effect what this court has found to be an illegal restraint under both the Sherman Act and the Clayton Act be taken away from the defendant insofar as exercising that 24-hour clause is concerned, as of the date of the entry of this decree.

Now, I do not feel that that is unreasonable and that it will impose any undue hardship upon the defendant in this case, but it will serve to protect the L-O dealer from any exercise of that clause by the defendant without any reason whatsoever, which it can do if this provision in paragraph VI and VIII is not in the decree while this case is on its way up to another determination of the same question, in [fol. 3465] substance, which we feel the Supreme Court decided in the Standard case. And that is the purpose of paragraph VI and paragraph VIII, to make certain in a sense, your Honor, that the status quo will be maintained insofar as the dealer is concerned, except that he is not going to be subjected during this appeal without any reason whatsoever to a 24-hour cancellation clause, which your Honor has found to be illegal and a device, and certainly has been resorted to to enforce the illegal restraint. And that is the reason why we have asked as to the 24-hour clause—I mean the injunction against using that, that it go into effect upon the signing of the order, and we feel that it is reasonable, we feel that it is in a sense necessary if the status quo insofar as the dealer pending the appeal is to be maintained, and is his right to protection. And while we are not here arguing the dealer's case, we do think that they are entitled as a group to be protected from this clause, or the exercise of it, during this appeal.

Now, if counsel are willing to stipulate that they will notify counsel for the government when they exercise that provision pending appeal, that might be satisfactory, but the government feels that the public interest here, as represented by the 1300 or more dealers who are subject to this

24-hour cancellation arrangement, should be given some protection pending this appeal from the exercise of that provision. As I say, we do not feel that it is going to impose [fol. 3466] any burden on the defendant here. We do feel that it will be of considerable value in a sense to the dealer, to protect him perhaps from cancellation of his lease. Some of the dealers testified here, as your Honor knows, and are still under that arrangement. I am not in any sense of the term suggesting that the defendant would cancel out those dealers for the reason that they testified in this case in favor of the government, but I think that on a broad basis this 24-hour provision, which the evidence shows has been used, and without which they obviously could not have so vigorously enforced this illegal arrangement, should at least be suspended in its operation pending the final determination of this case on appeal.

The Court: Are you afraid of reprisals?

Mr. Dixon: What is that?

The Court: Are you afraid of reprisals?

Mr. Dixon: That is a possibility, or the defendant could, of course, immediately, I assume, proceed to cancel out any number of these dealers that it might want to cancel out, and if they are not going to do that, then where are they hurt by this provision?

The Court: I hadn't given that phase of the subject any thought.

Mr. Dixon: That is the sole and only purpose of this provision, your Honor, and the reason why it is suggested in this case and not in the Standard case is because the 24-[fol. 3467] hour cancellation clause was a very vital part of this case, insofar as enforcing the illegal arrangement is concerned.

The Court: I had no thought in suggesting it in the decision, except the general thought that in any matter of this character it should be done. We talked about the Brooks case. That was a mandatory injunction, and had I not suspended the effect of the decree, they would have been compelled to do what they didn't have to do until two years afterwards. As a matter of fact, I only gave them 90 days, and it was extended because they had to get a new name, and they finally decided that rather than have a new name for fourteen stores, if they bought an established business it

might pay, and it did. So, as I say, that was my general thought.

Mr. Dixon: I might add this, if your Honor please, that it was the hope and thought of the government that with the decision in the Standard case, as to many of the practices, some of which have been presented to your Honor in this case, which are resorted to by some of the companies or individuals engaged in business, they would see fit to apply that decision or ruling to the practices that they were then resorting to.

It appears, however, that it may be necessary in every case to attack each practice. In other words, as your Honor knows, in substance at least, the government contends there was no real difference between the arrangement in this case and the one that was adjudged illegal in the Standard case. [fol.3468] But if the government is going to have to attack each company, and they are entitled, naturally, to their day in court, to have the legality of those practices determined case by case, of course there is no other alternative except to resort to that procedure, but the government feels that where the law has been established, as we feel it has been and was by your Honor in the Standard case, that they should not be entitled after an adjudication to a further suspension of the judgment except on the order of the Supreme Court itself. The government has not gone that far in this case. It is merely asking in paragraphs VI and VIII that a device, which has admittedly been used to enforce this illegal restraint, be enjoined in its use pending the final decision of the Supreme Court on that question.

The Court: All right. Is there anything you want to add, Mr. Paradise?

Mr. Paradise: Yes, your Honor, because I think this is the most important phase of this litigation. Does the court want it now, or after the recess?

The Court: No, I want to finish it now.

Mr. Paradise: All right.

The Court: I have other things to do, gentlemen. I have to select a grand jury for the next term at 1:00 o'clock, and I have a lot of other things. I am about to acquire new duties, in addition to my trial work.

[fol. 3469] Mr. Paradise: I congratulate you.

The Court: So I have to become prepared for them.

Mr. Paradise: I will confine this to the three parts attacked by the government, and under consideration by the court, and in the order the court suggested, I will take the last one first, the inclusion of that exception which was contained in the Standard case. I say this, and I do not intend rancor, but I feel that a good many statements of the government are sheer double talk in this matter. When it serves its purpose to say this case is the same as the Standard case, it does so. When it serves its purpose to say it is different, it does so. I don't know which is intended and which is the fact.

It is true, there is no so-called TBA agreement as there was in the Standard case, but I can't see from any plain reading of paragraph IX, which is in the Standard case, that it was based upon the existence of the so-called TBA agreement.

In this case we do not have a TBA agreement. We have a form 542, and the effect of these provisions may or may not be the same, but I say if this case is to be governed by the decision in the Standard Oil case, this defendant is entitled to a decree no more onerous.

Now, Mr. Dixon states there is no showing in this case that Richfield has furnished any receptacles or pumps with the Richfield name. What do we have in the L-O station [fol. 3470] but that very precise and actual thing, the furnishing not only of the pumps and receptacles, but the furnishing of the entire station, which necessarily includes the pumps and receptacles. And every one of the pumps is plainly marked with a decalcomania showing the Richfield brand and the Richfield name. I say it is entitled to the same saving clause as was therein contained.

Now, unless the court desires further discussion regarding that, I would like to go to paragraphs VI and VIII of the decree.

As to the nature of the injunction in paragraph VI, it is my feeling that the government has not answered the contention I made during my original remarks, and as to which I understood that the court agreed with me, and that was that this paragraph VI, although the language might appear strenuous, would not be interpreted as it is written, and would not be interpreted to provide that the defendant be enjoined from terminating any L-O lease except for an anti-

trust violation. The decree, of course, goes far beyond the question of any antitrust violation. It says that Richfield may not terminate except on 30 days' notice, and then only if there is a violation of any of the provisions of the written covenants of the lease, which provide for payment of two-thirds of the fair rental value to the defendant, and which provide for maintenance of the property without waste. [fol. 3471] That I submit is complete confiscation of property, and goes far beyond any divestiture decree under which any defendant would be entitled to get the fair value of the property of which he had to divest himself. But no decree in any antitrust case to which the government can point, unless I am most radically mistaken, has ever provided for divestiture in a situation of a technical restraint of trade, such as is here charged and here found.

We have no monopoly. We have no conspiracy. Nothing but a technical restraint under Section 1 of the Sherman Act and Section 3 of the Clayton Act.

Now, third, as to the saving clause, or, I mean as to the effectiveness of the decree, and the stay.

Mr. Dixon has suggested that the purpose of the qualification to the stay is that the defendant not exercise the 24-hour clause. But if one will look at the provision, the literal language of paragraph VIII of the proposed decree, it does not apply just to the first sentence of paragraph VI, which is the 24-hour clause. It says that for the entire provisions of paragraph VI the judgment is stayed. In other words, nothing in paragraph VI is stayed, which means that the defendant, as soon as this decree is signed, not only cannot use a 24-hour termination clause, but, further, it can't use a 30-day clause except for a proven violation of the written provisions of the lease.

Now, the government's ostensible reason for a decree [fols. 3472-3473] that drastic is that the defendant might use a valid termination clause, even one valid within the boundaries of this decision, a 30-day clause,—we might use it for improper purposes. I would submit that would be subject to proof, if that were true. Why do they need a provision, since they take away our property, that is to say, continue this lease indefinitely, or for all time, at two-thirds of its fair rental value, and without regard to the contract made between the parties.

The Court: All right.

Mr. Dixon: If the court please, I want to correct the record. I noticed that I referred to the Standard agreement as a TBA agreement. I find I am in error, and may the record show I was referring to the petroleum products and equipment agreement, which provides for the loan of it, and paragraph 4 reads as follows:

> "As additional consideration for dealer's execution of this agreement, company agrees to install the equipment and facilities listed below, title to such equipment and facilities to remain in Company."

The Court: All right, gentlemen. Thank you very much. I will think the matter over, and you will hear from the clerk. If I require any changes to be made that cannot be made by deletion, you will be informed to that effect. If I decide to sign without change, you will get the proper notice.

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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

Civil Action No. 6896-Y

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RICHFIELD OIL CORPORATION,

Defendant.

STATEMENT AS TO JURISDICTION

In compliance with Rule 12 of the Revised Rules of the Supreme Court of the United States, as amended, defendant submits herewith its statement particularly disclosing the basis upon which the Supreme Court has jurisdiction upon appeal to review the final judgment of the District Court entered in this cause on August 2, 1951. A petition for appeal is presented to the District Court herewith, to wit, on September 4, 1951.

Jurisdiction

The jurisdiction of the Supreme Court to review by direct appeal the judgment entered in this cause is conferred by § 2 of the Expediting Act of February 11, 1903, as amended (32 Stat. 823; 36 Stat. 1167; 58 Stat. 272, 15 U. S. C. A. 29).

The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal

in this cause: *Interstate Circuit, Inc.* v. *United States,* 306 U. S. 208; 83 L. ed. 610; *United States* v. *Crescent Amusement Co.,* 323 U. S. 173; 89 L. ed. 160; *Associated Press* v. *United States,* 326 U. S. 1; 89 L. ed. 2013; *United States* v. *Yellow Cab Company,* 338 U. S. 338; 94 L. ed. 150.

Statutes Involved

The pertinent provisions of § 1 of the Act of July 2, 1890, 26 Stat. 209, as amended (15 U. S. C. A. 1), commonly known as the Sherman Act, are as follows:

> "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal: . . ."

§ 3 of the Act of October 15, 1914, as amended (38 Stat. 731, 15 U. S. C. A. 14), commonly known as the Clayton Act, is as follows:

> "It shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies, or other commodities, whether patented or unpatented, for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce."

The Nature of the Case and the Ruling

This is a suit in equity brought by the United States in the District Court for the Southern District of California, Central Division, charging that defendant Richfield Oil Corporation (herein called "Richfield") was and is violating § 1 of the Sherman Act and § 3 of the Clayton Act.

The case involves three entirely separate and distinct types of service stations:[1] (1) *L. O. ("Leased Out") stations,* which are service stations owned by Richfield or leased by Richfield from a party other than the operator thereof and thereafter leased by Richfield to an operator under a written lease agreement for an indefinite period of time, subject to termination by either Richfield or the L. O. operator on 24-hours' notice. (2) *Dealer stations —337* which are owned by the 337 dealer or leased by him from a lessor other than Richfield. Richfield has entered into written sales agreements covering petroleum products with each of the 337 dealers, and in some instances Richfield and certain 337 dealers have entered into written Painting Agreements providing for the painting by Richfield of their stations. (3) *Dealer stations—3-C,* which are owned by the 3-C dealer or leased by him from a lessor other than Richfield. Here, in addition to a written sales contract with Richfield, the 3-C dealer has leased his station to Richfield and has taken a sub-lease back, both on Richfield's printed forms.

In support of its charge, plaintiff alleged the following: that Richfield had entered into contracts "consisting of written and oral agreements and understandings" between itself and "independent service station operators" in

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[1] The distinction between the three types of service stations has been recognized in the pleadings and throughout the trial and in the Opinion of the District Judge filed July 2, 1951, and in the Findings of Fact, Conclusions of Law and in the Final Judgment made and entered on August 2, 1951.

the States of California, Oregon, Washington, Nevada, Idaho and Arizona; that the written agreements consisted of written service station leases, sales contracts and painting agreements; and that the written agreements had been modified and supplemented by oral contracts, agreements and understandings between Richfield and the independent service station operators which specify and restrict the brands of petroleum products and automotive accessories that may be used by or sold at such service stations. It was alleged that these contracts unreasonably restrained and substantially lessened competition in interstate trade and commerce in petroleum products and automotive accessories.

The complaint did not charge a monopoly or attempt at monopoly by Richfield in any line of commerce. The complaint did not charge any conspiracy or combination.

With respect to the *L. O. stations,* Richfield denied in its Amendment to Answer that the L. O. operators are "independent" service station operators under the facts and circumstances admitted and alleged therein. Richfield admitted and alleged that each of the L. O. stations was acquired or constructed by Richfield as an outlet for the sale of Richfield's Petroleum products to the motoring public; that each L. O. operator has been selected and trained by Richfield and has been permitted by Richfield to occupy Richfield's L. O. service station and use Richfield's land, buildings, facilities and equipment on a temporary basis subject to termination on 24-hours' notice by either party; that the occupancy of Richfield's L. O. service station by any such operator is upon the understanding that Richfield has the right to designate, as a condition upon the operator's continued occupancy thereof, the manner of such operator's maintenance and operation of the station including, among other matters, the appearance and clean-

liness thereof and the nature and extent of the services to be rendered to the motoring public, and upon the understanding that only Richfield's products be handled or sold in such service stations, subject to such exceptions as Richfield might permit from time to time. The Amendment to Answer alleged that the relationship between Richfield and any such operator is analogous to the relationship of agency or to the relationship of employment for the purposes of and within the scope and meaning of the Sherman Act and the Clayton Act, respectively; and that under the facts and circumstances so admitted and alleged, the trade, custom and business of each of Richfield's L. O. stations as conducted by any such operator is Richfield's trade, custom and business and is not the subject matter of competition.

With respect to the *Dealer stations* (both 337 and 3-C), Richfield's answer denied any contracts, agreements or understandings, written or oral, with the independent service station dealers by which any of such dealers is required to handle only the brands of petroleum products and automotive accessories designated or approved by Richfield, or is required to acquire automotive accessories from sources designated by Richfield; and Richfield denied that it has required such dealers to handle only Richfield's petroleum products or Richfield's "sponsored" automotive accessories, either by threats of cancellation of contracts or by inspection, policing or supervision; and Richfield denied that it has cancelled the written agreement of any independent service station dealer because of the refusal of such dealer to conform to any such alleged oral contract, agreement or understanding.

At the trial Richfield introduced evidence in support of its contention that the relationship between Richfield and the *L. O. operators* is such that the business of Richfield's L. O.

stations is not a legitimate market for its competitors; that the L. O. operators are not independent businessmen as that concept is understood in Anti-Trust law; and that the restrictions imposed by Richfield on the L. O. operators are exempt from and not cognizable under either § 1 of the Sherman Act or § 3 of the Clayton Act. The nature of the relationship was shown by evidence of the manner in which the L. O. operators were selected by Richfield for installation in its L. O. stations, which selection was made after an investigation of the prospective operator's character, reputation, family background and like qualifications; by evidence that Richfield furnished to each L. O. operator, at a rental substantially less than the fair rental value thereof, a fully equipped service station (excepting only small tools and lubricating equipment); and by evidence that prior to installation in one of Richfield's L. O. stations, the prospective operator is thoroughly instructed and informed of Richfield's requirements and practices concerning the various phases of the operation and maintenance by the prospective operator of the station, only one of which is the requirement that Richfield's petroleum products and automotive accessories be handled exclusively in the station. Richfield's requirements included, among other matters, the wearing of Richfield uniforms, that the stations be manned by a minimum crew of helpers, that the station remain open a designated number of hours, that the operator and his helpers maintain a standard of personal cleanliness in appearance, and that the operator follow a designated procedure in his manner of dealing with the public. Each operator before taking possession of the station is thoroughly advised that his tenure of the station may be terminated by either Richfield or himself on 24-hours' notice, and that Richfield requires such termination privilege as protection of its property, investment and merchandising program. None of the written leases used contain provision

for any specified term other than that it shall continue until terminated by either party on 24-hours' notice. The prospective operator is informed that he will not be permitted to acquire or develop any good will or to make a charge for any intangible business value to any successor operator; and he is informed further Richfield will take steps to assist him in the disposition of his approved petroleum products, automotive accessories and service station tools on termination of his occupancy. The prospective operator is advised in advance of his installation that Richfield's merchandising representatives will come to the station at regular intervals to train and instruct the operator and his employees and to inspect the manner of compliance by the operator with Richfield's various instructions concerning his operations and the maintenance of the station. L. O. operators are regularly and periodically trained, instructed and supervised at their respective stations. L. O. operators at times have been promoted from one L. O. station to another or to Richfield's Marketing Department. The following circumstances have warranted Richfield's terminating the tenure of an L. O. operator: insufficient inventory, operation of a dirty station, failure to maintain sufficient operating hours, absentee operation, or failure to carry Richfield products exclusively.

Richfield also introduced evidence in support of its contention that its acquisition and ownership of the L. O. stations served a valid business purpose to provide an outlet for its products, and that it was not Richfield's purpose or intention to suppress or affect competition. The evidence in this respect showed the nature of Richfield's need for outlets and the increase of such need since the termination of World War II as a result of various factors, including the enlargement of Richfield's refinery capacity during the war at the request of the Government and the discontinuance of purchases by the Government at the conclusion of

World War II. Notwithstanding the expenditures of substantial sums of money in the acquisition by Richfield of properties and the construction of service stations thereon, nevertheless, the number of Richfield L. O. stations has not increased; and Richfield had fewer L. O. stations as of December 31, 1950 than as of December 31, 1941. In excess of 81% of all L. O. stations owned or leased by Richfield as of December 31, 1950 were "self-created stations", i.e., stations built or caused to be built by Richfield on sites never theretofore used or equipped as service stations handling any petroleum products, either Richfield's or those of any competitor.

As to the *Dealer stations,* the evidence showed that each of the 337 dealers and each of the 3-C dealers executed a written contract for the purchase of a specified quantity of petroleum products; and that the quantity set forth in the contract was substantially less than the quantity of the dealer's anticipated purchases based upon his past experience. None of such contracts (excepting four contracts entered into with 3-C dealers prior to the decision in *United States* v. *Standard Oil Company of California* in 1948) provided for the purchase by the dealer of his "entire requirements" of any of the petroleum products described; and there was no evidence of any supplemental oral agreement between Richfield and any of the 337 or 3-C dealers relating to the exclusive handling of petroleum products and automotive accessories.

On July 2, 1951, the District Judge filed his Opinion, a copy of which is annexed hereto as Appendix A, announcing a decision in favor of plaintiff. Findings of Fact and Conclusions of Law herein were filed on August 2, 1951 and the Final Judgment herein in favor of plaintiff was filed and entered on August 2, 1951. Therein it was determined that Richfield's agreements with the L. O. operators and the 337

and 3-C dealers violated both § 1 of the Sherman Act and § 3 of the Clayton Act.

In its Final Judgment (paragraph VI) the District Court enjoined Richfield from exercising for any purpose the 24-hour termination clause in any L. O. lease and enjoined Richfield from cancelling any L. O. lease on less than 30 days' written notice to the operator; and, in addition, the District Court enjoined the cancellation by Richfield of any L. O. lease even on such 30-day written notice "excepting only for a breach of any of the written covenants contained" therein. Since the L. O. leases do not contain any expiration date or stated term, and since the L. O. leases contain no "written covenants" concerning compliance by the operator-lessee of the many requirements orally imposed as conditions of the operator's tenure, the effect of such provisions in the Final Judgment was deemed by Richfield to be invalid as being confiscatory (even if the determination of violation of § 1 of the Sherman Act and § 3 of the Clayton Act be affirmed by the United States Supreme Court), particularly in light of the fact that rentals payable by the L. O. operators are substantially less than the fair rental values of the stations; and Richfield so asserted in a motion under F.R.C.P. No. 52 to amend the Findings, Conclusions and Judgment. Such motion, which also sought the amendment of the Findings and Judgment in other respects, was denied by the District Court on August 17, 1951.

The Questions Are Substantial

I

The L. O. Stations

The District Judge ruled, in essence, that the "form" of the transaction chosen by Richfield precludes Richfield from requiring that the L. O. operators, in their operation of

Richfield's own stations, confine themselves to Richfield's products. The District Judge's Opinion states (Appendix p. 31): "*So Richfield is tied to the form they chose.* And if it does not give them immunity from the admitted restraints they impose through it, they must bear the consequences of their voluntary act, regardless of any contrary intention they may have had in choosing it." And the Opinion states further (Appendix p. 35): 'Even if it be admitted that if the outlet were its 'exclusive agency', the limitation could be imposed as an incident of ownership, *under the form it has chosen*, Richfield cannot deny to the dealers the right to deal with other suppliers as to their products . . ." (Emphasis ours.)

The *form* which the District Court felt compelled the conclusion of illegality is the written lease between Richfield and the L. O. operator. The lease, since it creates the relationship of landlord and tenant, was felt by the District Judge to preclude the recognition that there exists concurrently any additional relationship, either one of a traditional common law category such as employee or agent or one which, while not traditional, is nevertheless denominative of the economic realities of the situation in terms of restraint of trade.[2]

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[2] State Courts have not felt themselves so circumscribed by the form of a transaction, and have determined that notwithstanding the existence of a lease or of a landlord-tenant relationship, the circumstances in a situation comparable to Richfield's lease to the L. O. operator were such that:

(1) the oil company-lessor was held to be the employer of the operator-lessee and the latter's helpers for purposes of Workmen's Compensation Acts:

Continental Oil Co. v. *Sirhall*, 222 Pac. (2d) 612 (Colo. 1950); *Bieluczyk* v. *Crown Petroleum Corp.*, 58 Atl. (2d) 380 (Conn. 1948);

(2) the oil company-lessor was engaged in operating the station for purposes of chain store tax liability;

Maxwell v. Shell Eastern Petroleum Products, Inc., 90 Fed. (2d) 39 (C.C.A. 4, 1937);

The plaintiff, United States, recognized in its complaint in this case that since it did not charge Richfield with monopoly or conspiracy or a specific intent to violate the Anti-Trust laws, Richfield's contracts with the L. O. operators could violate those Acts only if (a) the L. O. operators were independent businessmen in the light of Anti-Trust concepts and (b) the business of the L. O. stations was a legitimate market and the subject matter of competition to the end that competitors could be injured by being foreclosed access therefrom. The complaint so charged in paragraphs 7, 13 and 21.

The District Court's Findings of Fact ignore and accordingly treat as immaterial all of the uncontradicted evidence pertaining to the nature of the relationship between Richfield and the L. O. operators which demonstrate that (1) in economic reality, the L. O. stations and their business as conducted by the L. O. operators are no more a legitimate market for Richfield's competitors than they would be if the operators were salaried employees of Richfield or agents in the strict common law sense; (2) in economic reality, the L. O. operators are not "independent businessmen", (regardless of whether they be deemed independent contractors); and (3) the L. O. operators are functionally an integral part of Richfield's own sales organization and the relationship between them and Richfield is not primarily that of buyer and seller.

If this portion of the District Court's decision is allowed to stand and thus to establish the law that § 1 of the Sherman Act and § 3 of the Clayton Act are violated by restrictions imposed by a manufacturer on its own sales organization with whom the manufacturer has an intimate

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Standard Oil Co. (Ind.) v. *State Board of Equalization*, 99 Pac. (2d) 229 (Mont. 1940);
Midwestern Petroleum Corp. v. *State Board of Tax Commissioners*, 187 N. E. 882 (Ind. 1933).

relationship akin to agency or employment and under circumstances showing the absence of a legitimate market and correlatively the absence of effect on competition, such sections of the Sherman and Clayton Acts will have been extended in operation far beyond their basic and underlying purpose and into a field in which they traditionally have had no application. Until the judgment in this action, no case had determined a violation of either of such Acts under the facts here present.

F. T. C. v. *Curtis Publishing Company*, 260 U. S. 568, 67 L. Ed. 408 (1923);

U. S. v. *General Electric Co.*, 272 U. S. 476, 71 L. Ed. 362 (1926);

Appalachian Coals, Inc. v. *United States*, 288 U. S. 344, 360, 77 L. Ed. 825, 830 (1933);

United States v. *Addyston Pipe & Steel Co.*, 85 Fed. 271, 280-282 (C.C.A. 6, 1898);

United States v. *Masonite Corporation*, 316 U. S. 265, 279; 86 L. Ed. 1461, 1476 (1942);

Pictorial Review Co. v. *Curtis Publishing Co.*, 255 Fed. 206 (D.C.N.Y., 1917).

Standard Oil Company of California v. *U. S.*, 337 U. S. 293, 93 L. Ed. 1371, relied upon by the District Judge in his Opinion, differs materially from this case. No issue was raised in that case that the lessees of Standard's stations were not "independent merchants"[3]; nor was there any issue or contention that the functional relationship between Standard and the lessees of Standard's stations differed in any respect from the relationship between Standard and the

[3] Standard had admitted in its Answer (Transcript on Appeal to U. S. Supreme Court, page 91): "That approximately 1800 of said service stations are leased to *independent operators* by leases. . . ."

service station dealers who owned their own stations and purchased products from Standard under the exclusive dealing contracts there involved. No contention was made by defendant Standard in that action that there was any intimate relationship between the defendant lessor and the service station lessees there involved, or that the lessor either reserved or exercised the right of control over the manner of operation of the service stations by the lessees, nor did it appear that any of such leases were terminable by the lessor or by the tenant on short term notice. The Supreme Court assumed for the purpose of its decision in the *Standard* case that all of the service station dealers covered by the judgment appealed were "independent". The Supreme Court's decision recognized that if an agency or employment relationship exists, any exclusive dealing required by the principal or employer would not violate § 3 of the Clayton Act. While the District Judge stated that the Richfield agreements "are of the type condemned by the decision in the Standard Oil case", he rejected as immaterial all of the evidence above referred to demonstrating that the relationship between Richfield and the L. O. operators is of such nature that restrictions imposed by Richfield thereon are no more a violation of the Sherman or Clayton Acts than were restrictions imposed by Standard upon its salaried employees in its company operated stations, which latter persons and stations were held by the same District Judge in the *Standard* case not to be subject to the Anti-Trust Laws. *U. S.* v. *Standard Oil Company of California*, 78 Fed. Supp. 850, 854.

Even if the decision of the District Court as to violation of § 1 of the Sherman Act and § 3 of the Clayton Act be affirmed, nevertheless, if there be allowed to stand that portion of the District Court's Judgment which enjoins Richfield from cancelling any L. O. lease excepting on 30

days' written notice and then "only for a breach of any of the written covenants contained" therein, the law will have been established for the first time that in a case not involving a monopoly or attempted monopoly or a conspiracy or a combination or an intent to violate the Anti-Trust laws, the District Court in its decree may properly include injunctive provisions of a confiscatory nature and which appear more onerous than any injunctive provisions ever approved by the U. S. Supreme Court in a divestiture decree in an Anti-Trust action.

II

The Dealer (Including 337 and 3-C) Stations

While the complaint alleged and the District Court determined the existence between Richfield and each 337 and 3-C dealer of supplemental oral agreements providing that the dealer shall purchase all of his petroleum products and automotive accessories from or through Richfield, nevertheless, the District Court's decision cannot be sustained on such ground since there is no evidence whatsoever in the record to support a finding of such a supplemental oral agreement between Richfield and any one or more of the 337 dealers in the 1361 stations of that type or any one or more of the 3-C dealers in the 261 stations of that type; and any such findings are "clearly erroneous" under Rule 52(a) of the F.R.C.P. In his Opinion the District Judge in effect recognized the failure of proof of the allegation of oral agreements and predicated his decision of the illegality of the written sales contracts (providing for the purchase, not of the dealer's "entire requirements", but of specific designated quantities) upon the existence of Painting Agreements between Richfield and certain of the dealers. The Opinion states (Appendix pp. 37, 38):

> "It is quite evident that the aim of the sales contract is to so control the outlet for petroleum products that

there is little, if any, room left for dispensing products other than those contracted for. Such arrangements were envisaged by me in the Standard case. And it was pointed out in that opinion that, while an agreement of this character would as effectively shut out access to other products, it still left a *possibility* of dealing with others should the operator be unable to secure his full supply from the contracting supplier.

The painting agreement is obviously intended to secure an exclusive outlet under the guise of a painting agreement. Richfield is not in the business of painting. And the undertaking to paint at a certain cost in consideration of flying its colors under penalty of repayment when the agreement is breached, when tied to a sales contract which envisages 80 per cent of the needs of the operator, and to which the painting contract specifically refers,—could have but *one object*, i. e., to shut out all competition. And, in reality, that was *the effect* of the arrangement." (Emphasis by District Court.)

It should be noted that neither the Sales Contract nor the Painting Agreement prevents or forecloses the dealer from buying from any of Richfield's competitors additional quantities of the same or other products.

If this portion of the District Court's decision be allowed to stand and thus to establish the law that a sales contract providing for a specified quantity of products substantially less than the purchaser's anticipated requirements is an illegal "exclusive dealing contract" when used in connection with a collateral agreement under which the purchaser, who has received without charge the painting of his place of business, agrees to repay to the seller the cost of such painting in the event the purchaser fails to purchase the specified quantity, the Anti-Trust laws will have been extended by judicial interpretation beyond their language or purpose.

It is respectfully submitted that the Supreme Court has jurisdiction upon direct appeal, and that the questions presented are substantial.

Dated: September 4, 1951.

WILLIAM J. DEMARTINI,
ROBERT E. PARADISE,
Attorneys for Defendant.

KRYSTAL & PARADISE,
Of Counsel.

APPENDIX

IN THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

No. 6896-Y

UNITED STATES OF AMERICA, *Plaintiff*,

vs.

RICHFIELD OIL CORPORATION, *Defendant*

OPINION

Appearances:

For Plaintiff: William C. Dixon, Special Assistant to the Attorney General; Theodore M. Alexander, T. Keister Greer, Theron M. Hall, Lawrence M. Somerville, Special Attorneys, Anti-Trust Division, Department of Justice, Los Angeles, California.

For Defendant: William J. DeMartini, Robert E. Paradise, Los Angeles, California.

YANKWICH, *District Judge:*

This is an action instituted by the United States Government against Richfield Oil Corporation—to be referred to as Richfield—a corporation organized under the laws of the State of Delaware, with offices and its principal place of business in Los Angeles, California, in which the Government seeks equitable relief under Section 4 of the Act of the Congress of July 2, 1890, commonly referred to as the Sherman Anti-Trust Act (1), and under Section 15 of the Act of the Congress of October 15, 1914, as amended, commonly known as the Clayton Act (2). The Government seeks to prevent and restrain violations of Section 1 of the Sherman Anti-Trust Act (3) and Section 3 of the Clayton Act (4).

I

The Nature of the Controversy

Richfield is engaged in the business of acquiring and developing oil reserves and producing, transporting, refining and marketing petroleum and petroleum products therefrom in the States of California, Oregon, Washington, Nevada, Idaho, Arizona, Texas and New Mexico. No evidence was offered relating to activities in the States of Texas and New Mexico, but the pleadings alleged, and the evidence in the case showed, that, in the disposition of its products in the six States named, Richfield availed itself of various forms of outlets which were referred to as L-O (leased-out) stations, and "dealer" stations, designated as 337 and 3-C stations. Through regional representatives, merchandisers, salesmen and others, whose relation to the company need not be gone into, the petroleum products were supplied to the operators of these stations.

Richfield also deals in automotive accessories manufactured by others, which were referred to during the trial as "sponsored products". These consist of replacement parts and articles sold and used in servicing or repairing automotive vehicles. These include tires, tubes, batteries, spark plugs, oil filters, fan belts, battery cables, lamp bulbs, fuses, windshield wiper blades, tire repair and vulcanizing kits, anti-freeze, tire chains, and similar items.

During the trial, these were referred to as "TBA". It is the assertion of the Government that the various agreements, written and oral, existing between Richfield and the operators of these three types of stations, bind them, in effect, to secure *their entire requirements,* both as to petroleum products and TBA, exclusively from Richfield; that they are forbidden to handle petroleum products of any other company or to handle accessories competitive with those distributed or sponsored by Richfield.

In brief, the Government claims that these contracts are an unreasonable restraint of interstate trade or commerce, in violation of Section 1 of the Sherman Act, and substantially lessen competition and tend to create a monopoly in a

line of commerce, in violation of Section 3 of the Clayton Act.

Richfield has denied that there is a violation of either statute in their relations with any of the groups of dealers mentioned, either as to their petroleum products, or as to the sponsored TBA products.

II

The Commerce Involved

Despite voluminous testimony, the scope of the inquiry is rather narrow. The interstate origin and nature of the commerce of both the petroleum products and TBA is established beyond dispute. The petroleum products originate in oil reserves and producing wells and bulk plants and refineries operated in California and elsewhere, the products of which move across state lines continuously to supply the various stations. Richfield has oil reserves and producing wells in certain oil fields in California. Crude oil is transported by Richfield from producing wells in California to its refineries located at Watson and Vinvale, California. At the Watson refinery crude oil is refined into gasoline and other petroleum products. Richfield owns and operates two natural gasoline plants in California. Gasoline and other petroleum products refined at the gasoline plants in California are shipped by Richfield to its refinery at Watson, California. The petroleum products refined at its refinery at Watson, California, are, in some instances, shipped by Richfield from the refinery to bulk plants located in California, Oregon, Washington, Arizona, Nevada and Idaho. Gasoline and petroleum products are stored in bulk plants, and sold and delivered from time to time to service stations located in the respective states in which the bulk plants are located. Richfield maintains pipe lines in California used by it in transporting crude oil and petroleum products between points solely in California. It maintains automotive vehicles used in making deliveries of petroleum products from bulk plants to service stations located in the respective states in which the bulk plants are located.

Richfield owns 107 bulk plants in California, of which 23

are operated by Richfield and 84 by commission agents, from which petroleum products are distributed by Richfield and commission agents to 1577 service stations in California. It owns 35 bulk plants in Oregon, of which 2 are operated by Richfield and 33 by commission agents, from which petroleum products are distributed by Richfield and commission agents to 388 service stations in Oregon. Richfield owns 36 bulk plants in Washington, of which 4 are operated by it and 32 by commission agents, and from which bulk plants petroleum products are distributed by Richfield and commission agents to 646 service stations in Washington. Richfield owns 7 bulk plants in Nevada, all of which are operated by commission agents, and from which plants petroleum products are distributed by commission agents to 39 service stations in Nevada. Richfield owns 5 bulk plants in Idaho, all of which are operated by commission agents, from which petroleum products are distributed by commission agents to 56 service stations in Idaho. Richfield owns 22 bulk plants in Arizona, of which 2 are operated by Richfield and 20 by commission agents, from which petroleum products are distributed by Richfield and commission agents to 190 service stations in Arizona. In a few instances, petroleum products have been delivered from bulk plants in one state to service stations located in other states.

The sponsored products are manufactured at various industrial plants throughout the United States, from which they find their way first to the storerooms of the authorized Richfield distributors, and then to the shelves of the individual station operators. So there is a constant flow of interstate commerce in the operations of the defendant (5).

The competitive products, both petroleum and TBA, which were kept out of these stations as the result of the agreements, were manufactured at various places in the United States. So, in this respect also, if the practices of which the Government complains stand proved, they unquestionably affect the flow of goods and products in interstate commerce (6). The amount of commerce involved satisfies all the requirements of substantiality laid down by

the cases (7). The anti-trust laws forbid practices through which competitors are:

> "shut out of the market by a provision that limits it (a product), not in terms of quality, but in terms of a particular vendor" (8).

And, as said by the Supreme Court in another case:

> "The anti-trust laws are as much violated by the prevention of competition as by its destruction" (9).

Back of this is the fundamental determination embedded in the anti-trust laws to maintain our national economy free by keeping it competitive. The Supreme Court has expressed this thought very recently:

> "The heart of our national economic policy long has been faith in the value of competition. In the Sherman and Clayton Acts, as well as in the Robinson-Patman Act 'Congress was dealing with competition, which it sought to protect, and monopoly, which it sought to prevent' " (10).

A few statistics supplied by Richfield, and culled from the record, will suffice to demonstrate readily that the commerce affected is substantial. The number of L-O stations in 1950 was 1343. The number of 337 stations was 1361. The 3-C stations numbered 261. The Government, by counting the separate written agreements, which go to make up each unit, including the painting agreements, arrives at a total of 4581. If to these are added the oral agreements affecting the stations, we have a total of 7546 written and oral agreements.

The written contracts are approved at one of Richfield's divisional offices, of which there are three located in the States of California and Washington. The contracts come to the respective offices in those States from various other States for approval. Some of the contracts are required to be approved at the main Richfield office in Los Angeles.

The gallonage of gasoline distributed in 1950 through the L-O stations was 160,795, of the money value of $23,790,-

968.00. The gallonage of gasoline distributed through the 337 stations during the same year was 67,476, with a money value of $10,164,158.00. As to the 3-C stations, the gallonage was 20,385, and the money value $3,069,987.00. For the same year the gallonage of motor oils and greases was, as to all types of stations, 3,491,369, of the money value of $2,546,127.59. For the same year, the money value of tires and tubes sold to all three types of stations was $2,646,-400.07, of batteries, $48,040.37, and of other accessories, $956,412.96. The interstate nature of the commerce involved and its substantiality, both from the standpoint of the number of outlets involved and the quantity and value of the products handled, being evident, the pattern of our inquiry becomes very narrow. It is reduced to the problem whether the agreements through which this commerce was handled are of the type condemned by the decision in the Standard Oil Case (11), decided by me in 1948, and affirmed by the Supreme Court (12).

It is to be borne in mind that the opinion of the Supreme Court contented itself with the determination that the agreements there involved violated Section 3 of the Clayton Act. Here, we are concerned with the alleged violation of both Acts. And the case calls for the determination of both questions.

But, while the same principles are to be applied to the three different outlets, it is necessary to examine separately their characteristics, in order to determine whether there is any difference (a) as to the relation existing between the operators and Richfield, and (b) the restrictive practices in effect.

III

The Leases on L-O (Leased-out) Stations

The problem is simplified as to the L-O stations by the Richfield admission that the oral understandings under which the leases are made, and for the violation of which the leases are forfeited under the 24-hours' termination clause, to be referred to, not only provide but *demand* that Richfield petroleum products and Richfield-sponsored TBA products be handled exclusively and without deviation.

So the main consideration as to these stations is the relations which control them. The extent of the commerce affecting these stations has already been adverted to. It should be added that Richfield claims an investment in these stations as of December 31, 1950, of $19,542,082.58, of which the cost of the land purchased represents $11,213,657.33, and the cost of improvements installed, $8,328,425.25. The latter figure was deducted as depreciation for tax purposes over a period of five years. The figures as to improvements relate chiefly to the stations themselves, and adjunct buildings and the permanent equipment. They do not include improvements such as tanks, pumps, compressors, hoists, neon signs, hiboys and the like.

In justification of the investment, and, for that matter, of the entire policy, Richfield asserts that once "the shooting war" was over, and the purchase of gasoline by Government agencies had decreased, it was *compelled* to find an outlet for the increased refining facilities which it had built during the war period, and that the only certain way of securing an assured market was through controlled units.

Intent and purpose are an element in a case involving violation of Section 2 of the Sherman Act (13). But such violation is not concerned with a specific intent. And a specific intent, or good motive, for that matter, is not material when we deal with Section 1 of the Sherman Act (14), or Section 3 of the Clayton Act (15). The determining consideration is the effect of a particular practice on interstate trade or commerce. Other considerations, *such as economic necessity,* do not, and should not enter into our inquiry whether the practices here involved violated either statute (16).

Very recently the Supreme Court rejected a contention that the anti-trust statute should not be given full effect in a particular field, in view of certain current foreign trade conditions (17). The argument is just as valid when applied to market conditions as to petroleum and allied products in a specific area in this country. Economic considerations are relevant in determining legislative policy. They may be important in interpreting the limit of that

policy. They do not constitute an excuse for the violation of the legislative policy declared in a statute.

These preliminary observations clear the way for a consideration of the nature of the arrangements under which the L-O stations were operated. The foundation of the relations was the service station lease, denominated Form 542. It was prepared by Richfield, underwent several changes through the years, and, in its final form, as it appears in this case, it was an elaborate lease containing fifteen different clauses setting forth the conditions governing the transfer of the property.

The habendum clause of each lease leases the described real property and the improvements and facilities thereon to the designated lessee for a definite period of time, subject to a 24-hours' termination clause, at a specified rental per month, payable in advance on the first day of each of the calendar months. In addition to this, the lessee agrees to pay as rental a sum equivalent to the total number of gallons of gasoline in excess of a certain stated maximum, delivered to the premises during the month for which payment is being made for resale and distribution, the rate being fixed for each of the twelve months of the year, on the basis of the excess over a definite amount of gallons. Richfield has the right to demand a deposit of cash or bond to secure the payment of the rent in amount equal to the average rent payable.

The lease limits the use of the premises to the operator of a gasoline station, prohibits the use for any other or an unlawful purpose, and forbids the commission of a nuisance by the lessee. The prohibition by law of the continuance of the business terminates the lease. There follow provisions placing upon the lessee the duty to maintain the premises and the improvements in good repair and a clean and safe condition, and prohibiting the making of changes or alterations without the permission of the lessor. The remaining clauses may be summed up briefly. The lessee, upon expiration of the lease or its termination, agrees to surrender the premises in as good a condition as when received, wear and tear excepted. Destruction by fire terminates the lease. The lessee is responsible for all charges

for utilities. Failure to comply with the terms of the lease, default in payment of rent, bankruptcy or insolvency, the levying of an attachment, assignment or execution, or the institution of any other legal proceedings affecting the premises or any of the equipment on them, is ground for termination without notice. The lease is not assignable, either voluntarily or by operation of law. And the lessee agrees to indemnify the lessor against any claims for injury to property or person occurring on the premises during the operation of the lease by himself, his agents or employees. There follow the usual general clauses protecting against waiver of breach, making provision for attorney's fees for the lessor in case of suit, and designating the place to serve notice, and *merging into the instrument all other agreements.*

IV

The Nature of the Lessee's Interest

If this instrument is assayed by the accepted tests which determine the relation of landlord and tenant, the conclusion is inescapable that it is a lease. For we have a relation which is the result of specific agreement, which calls for (a) a fixed term, (b) at a determined rental, (c) by which a specific estate passes to the tenant, (d) who takes exclusive possession of the premises against all the world, including the owner, (e) all the lessee's rights being subordinated to the primary right to the fee of the owner, and (f) subject to reversion to him at the end of the term, or on termination of the lease (18).

Implicit in the contract is the lessee's assumption of obligation and responsibility for his own acts upon the premises and those of his employees in their relation to the public, who come in contact with them during the time of his dominion. The lessee is not the employee of Richfield. Richfield pays him no wages or other remuneration. He must carry his own workmen's compensation. He is not carried on their books as an employee for the purpose of social security taxes or any of the withholding taxes, state or federal, incidental to the employer-employee relationship. Richfield is not required to withhold any moneys from

him for income tax purposes. Neither are they required to perform any of the duties just mentioned as to any of the employees who may assist the lessee in the conduct of the station or of any auxiliary repair work upon the premises. The lessee is solely responsible for his own conduct and that of his employees which may cause damage to the person or property of others. In brief, it would be difficult to find an instrument which so completely makes, by its own terms, the lessee master of the domain covered by the lease as does this lease. He is certainly as independent as any lessee is. And the relationship is no different than that found in the "leased-out" stations in the Standard case (19).

When, in law, we speak of "an independent contractor", or "an independent business man", we deal with a practical concept, not with a philosophical phrase. We mean a person who, in the performance of a particular contract, or in the conduct of his business, acts chiefly *for himself* and *for his own benefit and profit*, and *not* for others and the benefit and profit of others. And this is true, even though, as in every contract, the other party to the contract may also derive benefits. Mutuality of benefits lies behind every contract. And the fact that a party to such contract may derive a benefit or impose conditions in the carrying on of an enterprise which transcend the usual conditions, does not destroy the independent character of the other party.

In a sense, in this complex and interdependent world, no one is really independent. But when, through a formal and written instrument, a relationship is established by which exclusive possession and control of property is turned over to another, in exchange for a specified rental, with full responsibility for the conduct of the business falling upon the lessee, with all profit or loss accruing entirely to him and not to the transferor, the relationship satisfies all the requirements of an independent enterprise. And when a corporation like Richfield deals with such an enterprise, it cannot be said to be dealing *with itself*, as though the estate it created were nothing and the person in charge, to whom possession was turned over, is a mere employee because, under clauses not contained in the contract, they supervise

his actions, regulate,—to some extent,—his personal appearance, and do other things, some distinctly illegal, as will presently appear.

In this respect, the Timkin case, already referred to, is very revealing. It involved a prosecution under Section 2 of the Sherman Act. It was Timkin's contention,—*as it is the contention of Richfield,*—that certain wholly-owned subsidiaries were *so controlled* by them, that, in reality, *they were not other corporations* with which they could conspire to violate the Act. But the Supreme Court declined to allow the control to destroy the existence of the units as separate business entities, and held that the law was violated when Timkin engaged in the prohibited acts *with its own subsidiaries.* Just as Richfield here would have us characterize their relationship with the L-O stations by some name unknown to common-law categories, Timkin, in that case, resorted to the term "joint venture" to avoid the charge of illegality. But the Supreme Court's answer was brief and decisive:

> "The fact that there is common ownership or control of the contracting corporations does not liberate them from the impact of the antitrust laws. E. G. Kiefer-Stewart Co. v. Seagram & Sons, supra at 215. Nor do we find any support in reason or authority for the proposition that agreements between legally separate persons and companies to suppress competition among themselves and others can be justified by labeling the project a 'joint venture'. Perhaps every agreement and combination to restrain trade could be so labeled" (20).

The principle which the Supreme Court applied is not new. That Court has repeatedly declared that

> "common ownership and control does not liberate corporations from the impact of the anti-trust laws" (21).

This indicates clearly that the principle is applicable whether we are dealing with a monopoly case under Section 2 of the Act—as the Timkin case was,—or a case in restraint

of trade under Section 1 of the Act. Rightly. For in all these cases, the Courts have insisted

> "reality must dominate the judgment" (22).

And, if control of instrumentalities which results in abolishing competition among them were sufficient to relieve the parties of the effect of the agreement on interstate commerce, the purpose of the Act could be subverted by the establishment by large industrial concerns of "puppet" outlets tied to the parent organization by the most restrictive agreements which would not only unreasonably restrain trade and lessen competition, but actually destroy it.

In interpreting this and other statutes, we must eschew the tyranny of words or labels. We must, in each case, get behind the façade which the organization has created,—as did the Supreme Court in the Masonite case when it went behind a del credere agency, which, at first blush, seemed to be a fiduciary relationship established by the concern for its own purposes, and found, instead, a means for monopolization. The Court did not then hesitate to declare the agency a mere cloak for restraints:

> "So far as the Sherman Act is concerned, the result must turn not on the skill with which counsel has manipulated the concepts of 'sale' and 'agency' but on the significance of the business practices in the term of restraint of trade" (23).

In the light of these norms, we continue our analysis of the relations established by the written lease. The operator pays for his gasoline and the petroleum products sold to him by Richfield. They are not merely consigned to him. Upon execution of the lease, if he was preceded by another lessee, he pays for the inventory of petroleum products on the premises, and of the approved TBA products. He is responsible for credit losses, except such as result from extension of credits to customers carrying Richfield cards. If we consider the provision for 24-hours' termination as valid, the lessee has, at the worst, *a tenancy at will*. And in the American law of landlord and tenant, this is an estate carved out and independent of, but subordinate to, the

estate of the transferor (24). While the ancient common law did not favor this form of estate, it recognized it. Indeed, even in the absence of a statute the courts of England required a notice to quit in order to terminate the estate (25). State courts, including those of California, have followed the trend of turning an estate at will into an estate for a definite term whenever, through the method of paying rent, or other provisions in the lease, it was apparent that a definite term was contemplated (26).

So the Courts have done all in their power to give to this estate, so humble in the feudal law, a higher standing in accordance with their desire to achieve a more rational and just relationship than strict application of antiquated feudal principles would warrant. And it is interesting to note that in a very early California case,—even before the law as just stated became crystallized,—the Courts ranked the rights of a tenant at will *so much higher* than those of an employee that they rejected the contention of one who was the caretaker of property of another that he be considered a tenant at will, saying:

> "Such a principle is not countenanced by the authorities, and its adoption would lead to very inconvenient results. *It would give to servants and agents novel and embarrassing powers over employers and their property*" (27). (Emphasis added.)

And I am inclined to think that, because of the conflict of the 24-hours' termination clause with the monthly rental provisions, Courts would consider the tenancy created by the L-O agreements, *at least*, a month-to-month tenancy *terminable only* upon the minimum notice required in such cases.

In the case before us, there is no evidence that it was ever used as a means for terminating the lease for the infraction of any of its express conditions. It was used only to enforce the illegal restraints superimposed orally. Indeed, it was the boast of the representatives of the Company that so long as the provision as to exclusive dealing in Richfield products or Richfield sponsored TBA products were complied with, the tenancy was of practically *unlimited duration*, and that prospective lessees *were so informed*.

V

The Oral Requirements Restrictions

So we come to the question: Is the independence, both legal and factual, created by the lease destroyed by the oral agreements and conditions superimposed by Richfield and which binds the lessee to the distribution of Richfield petroleum products and Richfield sponsored TBA products under penalty rigidly enforced—as the record shows,—of ouster unceremonious on 24-hours' notice, sometimes effected between sundown and sunup of successive days? Richfield insists that it is. The fact of control is admitted in their Answer, which states:

> "That each of the service stations owned by Richfield or leased by Richfield from a party other than the operator thereof, was acquired and/or constructed by Richfield as an outlet for the sale of Richfield petroleum products to the motoring public; and that each operator of any such service station has been selected and trained by Richfield and has been permitted by Richfield to occupy such service station and use Richfield's land, building facilities and equipment on a temporary basis subject to termination on 24-hours' notice."

Evidencing the rigor with which the control was exercised, there were shown at the trial instances of termination of the lease for failure to conform to the restrictions as to the products to be sold. On termination, no matter how long the occupancy had been, the lessee was not allowed to choose his successor, even in cases where the latter had agreed to purchase from him not only the petroleum products and approved products, but also the non-approved items on his shelves or equipment which he had installed. On termination, it was Richfield's policy to instruct the buyer that he "was not required" to buy the non-sponsored TBA products or other equipment owned by the lessee. And in all instances in which the suggestion was made, "he did not buy". Nor did Richfield allow the lessee to capitalize on his good will. On termination, the lessee could receive no compensation for good will, even when he found a buyer

willing to pay for the good will which the long occupancy and the efforts of the lessee had created at the particular station.

These and other incidences of control, not spelled out in the lease, but made effective through Richfield's exercise of power, led Richfield to insist at the trial that their control over the L-O type station *was*, in effect, *ownership*. And they sought to apply to this ownership my statement in the Standard case that restrictive agreements are not prohibited as to wholly-owned outlets. (28)

We need not quarrel with the statement referred to, although the form in which it was cast indicates clearly that it applied only to the facts there before the Court. However, the discussion which precedes indicates that the Supreme Court has held repeatedly that even ownership does not stand in the way of the application of the restraint provisions of the Sherman Anti-Trust Law. (29) And the obvious answer to the claim of ownership is the same which Courts give in tax cases to the contentions of taxpayers who, after having chosen to do business under a certain form of organization, try to have us disregard it, on the ground that they were, in reality, "doing business with themselves". (30) And the answer is that a person choosing a particular entity in order to achieve certain results is not in a position to ask us to disregard it, when he wishes to avoid results unanticipated.

So Richfield is tied to the form they chose. And if it does not give them immunity from the admitted restraints they impose through it, they must bear the consequences of their voluntary act, regardless of any contrary intention they may have had in choosing it.

VI

The "Created" Market

Richfield contends that it "created" these instrumentalities for its own purpose. For this reason, they argue that there could be no restraint of trade, because no competition is involved. No case will be found which supports the contention that the mere creation of an exclusive form of outlet is, in itself, sufficient to avoid the consequences

of the anti-trust laws. Indeed, one of the elder cases (32) to which the case cited by Richfield referred as its authority, specifically holds that contracts, no matter how worded, will be scrutinized in order to determine whether they have been entered into or are to be performed for the apparently legitimate purpose which they specify on their face or *for the purpose of restraining the free flow of commerce.* We quote the language of the Court:

> "The court in the Standard Oil Case construed the act as intended to reach only combinations unduly restrictive of the flow of commerce or unduly restrictive of competition, and, illustrating what were such undue or unreasonable combinations, it classed as illegal (p. 58) 'all contracts or acts which were unreasonably restrictive of competitive conditions, either from the nature or character of the contract or act or where the surrounding circumstances were such as to justify the conclusion that they had not been entered into or performed with the legitimate purpose of *reasonably forwarding personal interest and developing trade, but on the contrary were of such a character as to give rise to the inference or presumption that they had been entered into or done with the intent to do wrong to the general public and to limit the right of individuals, thus restraining the free flow of commerce and tending to bring about the evils, such as enhancement of prices, which were considered to be against public policy'.*" (33) (Emphasis added)

And in the very case referred to, the following is given as the purpose of the anti-trust statutes:

> "Combination which unreasonably limits competition which would otherwise exist between persons in similar businesses is illegal. A suppression of competition necessarily restrains commerce. Board of Trade v. United States, 246 U. S. 231, 38 S. Ct. 242, 62 L. Ed.. 683, Ann. Cas. 1918D, 1207. The purpose of the anti-trust laws—an intendment to secure equality of opportunity—is thwarted if group-power is utilized to eliminate a competitor who is equipped to compete." (34)

The vice of the entire argument lies in the fact that it permits suppression of competition *at the inception of an enterprise,*—a practice against which the Clayton Act is specifically directed. As is shown in this case,—a concern such as Richfield, through investment of large sums of money in real property and on stations, could so tie the hands of the sellers of its products as to completely shut out competition. If the fact that no outlets for the product existed before Richfield entered the field, would give complete immunity, regardless of the purpose for which the outlets are established and of the manifest intent to keep out competitors and to deny to the public at large access to competitive products through these outlets, then the anti-trust laws could be circumvented easily.

But the argument lacks substance. The trade was there, it being the custom for which it was bidding. And, if in bidding for it, it eliminated others and prevented their access to the products, the market is unreasonably restrained. As said by a unanimous Supreme Court:

> "In order to establish violation of the Sherman Act, is it not necessary to show that the challenged arrangement suppresses all competition between the parties or that the parties themselves are discontented with the arrangement? The interest of the public in the preservation of competition is the primary consideration. The prohibitions of the statute cannot ' . . . be evaded by good motives. The law is its own measure of right and wrong, of what it permits, or forbids, and the judgment of the courts cannot set up against it in a supposed accommodation of its policy with the good intention of parties, and it may be, of some good results.' " (35)

Neither the Curtis case (36) nor the Masonite case (37) warrants the conclusion that the creation of individual outlets creates such immunity. In the Curtis case the Court found that the contracts under consideration created an "agency" between the parties which had none of the features condemned by the anti-trust law. Such relationship found to have been legitimately entered into by the Federal

Trade Commission on findings of fact conclusive upon the Court, the Court found no legal reason to condemn, saying:

> "The engagement of competent agents obligated to devote their time and attention to developing the principal's business, to the exclusion of all others, where nothing else appears, has long been recognized as proper and unobjectionable practice. The evidence clearly shows that respondent's agency contracts were made without unlawful motive and in the orderly course of an expanding business. It does not necessarily follow because many agents had been general distributors, that their appointment and limitation amounted to unfair trade practice. * * * Effective competition required that traders have large freedom of action when conducting their own affairs. Success alone does not show reprehensible methods although it may increase or render insuperable the difficulties which rivals must face. The mere selection of competent, successful and exclusive representatives in the orderly course of development can give no just cause for complaint, and, when standing alone, certainly affords no ground for condemnation under the statute." (38)

The Masonite case has already been commented on. (Part IV of this Opinion) There the Court found no difficulty in condemning what were apparent del credere agencies as means for illegitimate restraint. Convinced that the object of the establishment of the agency was to restrain commerce, the Court found no difficulty in disregarding the form. Richfield has enunciated an abstract concept which finds no justification in the history or interpretation of the anti-trust laws. To follow it would mean to turn defiance of law into a virtue, to make legitimate the very *means* of restraint. Granted that a business may create its own outlets, it can do so only by making them *its agency in truth and fact.* It cannot do so by creating a well-recognized legal estate, superimpose on it oral limitations, the object of which is to restrain trade, and then claim legitimacy for this very restraint. Even exclusive agencies, if they are

of a character as to result in business restraints of commerce, would be violative of the Clayton Act, even if, at their creation, they did not violate the Sherman Act.

So Richfield cannot, by creating the relationship of landlord and tenant, long and anciently known to our law, with all the responsibilities that such relationship imposes on the transferee, restrain trade through that outlet by imposing illegitimate oral contracts which restrict the transferee to the handling of Richfield's products or Richfield's sponsored products. Even if it be admitted that if the outlet were its "exclusive agency", the limitation could be imposed as an incident of ownership, under the form it has chosen, Richfield cannot deny to the dealers the right to deal with other suppliers as to their products, or to deny to such suppliers access to the dealers, so that these varied products may reach the public, whose protection the anti-trust laws seek. The law, as the Supreme Court has stated,

> "does not compel competition" (39).

But restrictive contracts are condemned because of their

> "denial to commerce of the supposed protection of competition" (40).

And, as said in the same case, when such restrictions

> "are parts of a plan, the mere projecting of which condemns them unconditionally, the realization of the plan itself must also be proscribed" (41).

It follows that the L-O operators are, by the instrument of their creation, independent business men, as that concept is understood in anti-trust law, and that the imposition on them by oral agreements of restrictive conditions limiting their dealings to Richfield products and Richfield sponsored TBA products, and denying access to other dealers in petroleum and accessories to these stations, and, through them, to the public, is violative of both Section 1 of the Sherman Anti-Trust Law and Section 3 of the Clayton Act.

VII

The "Dealer" Stations

We come now to the agreements under which the other stations are operated. We refer to the 337 stations and to the 3-C stations. As to these stations, Richfield admits that they are independent. Their chief witness and general manager in charge of sales, W. G. King, admitted that they were such, and he applied the designation to station dealers "who owned their places of business or leased them from others than Richfield."

The problem as to these stations is, therefore, a factual one: Do the written instruments under which these stations dispense Richfield products and Richfield sponsored TBA products and the oral agreements accompanying them restrict them to the handling of these products exclusively?

Richfield has classified these stations as "dealer stations". They include service stations which are owned by service station dealers or leased by them from a lessor other than Richfield. Richfield has leased these stations from the dealers, and, in turn, has sub-leased them back to the dealers and has entered into a written sales contract with each dealer covering the petroleum products to be handled by the dealer. Each of the units into which this group is divided—337 and 3-C—is governed by multiple instruments.

In the case of the 337 stations, the fundamental instrument is a service station lease, originally running from the owner to Richfield, and an operator's lease from Richfield to the operator, the operator assuming, in substance, the obligations of Richfield under their primary lease, with some modifications at times as to the rent paid. The record discloses that in some instances, the rental received by Richfield from the operator is less than it pays under its lease with the owner.

For brevity's sake, we omit the description of the terms, which are the usual terms in such leases. Their enumeration would not aid the discussion, because the tie-in as to these stations is represented by an operator's sales contract whereby the operator agrees to purchase from Richfield a *definite* quantity of gasoline, lubricating oil and greases for

each month. The evidence in the record shows that the computation intended to cover 80 per cent of the estimated requirement.

As to the other stations, presumably stations owned by the operator as to which no landlord and tenant relationship exists between Richfield and the operator or Richfield and the original owner, the tie-in agreement consists of a sales contract of the type already described and a painting agreement whereby Richfield agrees to paint the station in its own colors and insignia. After an expenditure of a definite sum of money, the dealer agrees to

> "remove from the surface of the station which is to be painted all signs and insignia, and upon completion of the painting of said service station by Richfield, shall not place upon or over the painted surfaces any advertising sign, trademark, insignia, or any other matter without first procuring the consent and approval of Richfield."

And Richfield retains the right to cause the removal of any signs placed in violation of this clause. The violation of any of the terms of the agreement makes the dealer liable to Richfield for the amount expended in painting.

It is quite evident that the aim of the sales contract is to so control the outlet for petroleum products that there is little, if any, room left for dispensing products other than those contracted for. Such arrangements were envisaged by me in the Standard case. And it was pointed out in that opinion that, while an agreement of this character would as effectively shut out access to other products, it still left a *possibility* of dealing with others should the operator be unable to secure his full supply from the contracting supplier.

The painting agreement is obviously intended to secure an exclusive outlet under the guise of a painting agreement. Richfield is not in the business of painting. And the undertaking to paint at a certain cost in consideration of flying its colors under penalty of repayment when the agreement is breached, when tied to a sales contract which envisages 80 per cent of the needs of the operator, and to which the

painting contract specifically refers,—could have but *one object*,—i.e., to shut out all competition. And, in reality, that was *the effect* of the arrangement.

Richfield's witnesses testified that the instructions to their representatives were "to persuade" the dealers working either under 337 or 3-C arrangements to confine themselves to Richfield products. On the other hand, individual operators of these types of stations have testified to the fact that they were "coerced" into limiting themselves to Richfield products, that they were "called on the carpet", as it were, if other products were on their shelves.

It is not denied that Richfield maintained a policy against "split" pumps,—that is, pumps of other gasoline distributors. And it is quite evident that, in one form or another, the policy has been enforced, and that the moment gasoline of another concern was handled by any of the operators on these leases,—as one of their own witnesses put it,—Richfield "was no longer interested in the station", and terminated their relationship. Some of Richfield's own field representatives, called by the Government, testified that their instructions as to these stations were not to accept them and sell products to them, except upon a hundred per cent basis, i.e., that they deal only in Richfield products. Unauthorized signs were reported to Richfield. Orders were given to remove these competitive signs, when discovered. And, as to both types of stations, Richfield salesmen testified that their instructions were that only approved merchandise was to be handled, and that they understood the sales and painting agreements to call for that policy, and so informed the operators of "dealer" stations.

There is also evidence that, despite the asserted independence of these operators so far as TBA products are concerned, in reality, there was coercion to induce them to confine their dealings to the sponsored products. In truth, there is evidence that the policy of the Company was that if "any dealer" refused to interest himself in Richfield sponsored TBA products, "then it's a new dealer",—i.e., the instructions were to cancel the arrangement, whatever it was.

The fact that non-sponsored TBA products were more profitable to the dealers, either because of better discounts

or quicker fulfillment of warranties, shows Richfield's motivation in keeping this trade for itself by means of these agreements. It is true there were denials by witnesses for Richfield. But it is significant that the denials are mostly by persons who either made policy or carried it into effect, or who testified to instructions given or received on the subject.

On the other hand, the existence of the practice is testified to by men in charge of the stations or by men in the field who testified to *particular* experiences and incidents.

So the trier of fact must choose. And, when confronted by a series of instruments, the sole object of which is to tie these stations to contracts which, in effect, are *requirement* contracts, although not so denominated, the testimony of the men in the field who actually were told that they *could not* trade freely with outsiders fits into the scheme which the sales contracts coupled with the leases, and the sales contracts coupled with the painting agreements, evidently was intended to set up.

We conclude, therefore, that the agreements relating to L-O, 337 and 3-C stations under which Richfield has operated in the six named States, are, and each of them is, in their creation and effect, in violation of Section 1 of the Sherman Anti-Trust Act and Section 3 of the Clayton Act. (42)

Judgment will, therefore, be for the plaintiff upon the following specific findings:

(1) The Richfield agreements as to each of the three types of stations relate to interstate commerce.

(2) They affect, and the transactions under them are, in the course of interstate commerce.

(3) The relation established by each of the three types of agreements, L-O, 337 and 3-C, is that of independent contractor, each of the operators being an independent business man, as that term is understood in anti-trust law.

(4) The 24-hours' termination clause has been used as an instrumentality to force upon the lessees of L-O stations illegal restrictions as to the types of petroleum and sponsored TBA products to be handled on the premises.

(5) The 24-hours' termination clause is invalid, against

public policy, and cannot, either under state or federal law, be enforced as a means of terminating the lease for even legal grounds by any notice by either side less than at least the minimum rental period for which rent is reserved, one month.

(6) Richfield should be prohibited from using the 24-hours' termination clause at all to enforce its restrictive conditions as to the products sold on the premises.

(7) The agreements in the form of leases, sales contracts and/or painting contracts, and the oral agreements superimposed on them confine the operations of the stations to which they apply to dealing exclusively with Richfield petroleum products and automotive accessories handled or sponsored by Richfield.

(8) The agreements lock out dealers from sources of competitive products originating in interstate commerce.

(9) The agreements deny to dealers and, through them to the public, access to such competitive products.

(10) The agreements deny to manufacturers or suppliers of such products access to the outlets controlled by the independent business men who operate the three types of stations.

(11) The agreements affect a substantial number of outlets and a substantial amount of products, whether considered comparatively or not.

(12) The agreements constitute an unreasonable restraint of trade and commerce among the States, under Section 1 of the Sherman Anti-Trust Act. (15 U.S.C.A., Sec. 1)

(13) The agreements result in a substantial lessening of competition and tend to create a monopoly in a line of commerce in contravention of Section 3 of the Clayton Act. (15 U.S.C.A., Sec. 14)

(14) The agreements are illegal in their effect and should be enjoined.

Dated this 2nd day of July, 1951.

LEON R. YANKWICH,
Judge.

NOTES TO TEXT

1. 15 U.S.C.A., Sec. 4.
2. 15 U.S.C.A., Sec. 25.
3. 15 U.S.C.A., Sec. 1.
4. 15 U.S.C.A., Sec. 14.

5. Santa Cruz Fruit Packing Company v. Labor Board, 1938, 303 U.S. 453, 463; United States v. Yellow Cab Company, 1947, 332 U.S. 218, 224-226; United States v. Paramount Pictures, 1948, 334 U.S. 131, 173; Carter Carburetor Corp. v. Federal Trade Commission, 1940, 8 Cir., 112 F(2) 722, 730; United States v. Standard Oil Company of California, 1948, D.C. Cal., 78 F. Supp. 850, 856, and cases cited in Notes 3 and 4.

6. See writer's opinion in United States v. Standard Oil Company of California, 1948, D.C. Cal., 78 F. Supp. 850, 856-864, and cases cited in Footnotes 4-33. And see, Fashion Originators' Guild v. Federal Trade Commission, 1940, 2 Cir., 114 F(2) 80, 84-85; Wickard v. Filburn, 1942, 317 U.S. 111, 118-128; Mandeville Farms, Inc. v. American Crystal Sugar Company, 1948, 334 U.S. 219, 229-234.

7. Standard Oil Company v. United States, 1911, 221 U.S. 1, 61; Indiana Farmer's Guide Company v. Prairie Farmer Publishing Company, 1934, 293 U.S. 278-279; United States v. Columbia Steel Company, 1948, 334 U.S. 495, 525; United States v. Griffith, 1948, 334 U.S. 100, 105-107; William Goldman Theatres, Inc. v. Loew's, Inc., 1945, 3 Cir., 150 F(2) 738, 744.

8. International Salt Company v. United States, 1947, 332 U.S. 392, 398.

9. United States v. Griffith, 1948, 334 U.S. 100, 107.

10. Standard Oil Company v. Trade Commission, 1951, 340 U.S. 231, 248-249; See the writer's opinion in Balian Ice Cream Company v. Arden Farms Company, 1950, D.C. Cal., 94 F. Supp. 796, 801, and cases cited in Notes 18 and 19; and F. & H. Ice Cream Company v. Arden Farms Company, 1951, D.C. Cal., — F. Supp. —, especially Note 44, which gives a history of the development of the concept which led to the adoption of the anti-trust laws. And see, Shotkin v. General Electric Company, 1948, 10 Cir., 171 F(2) 236, 238; United States v. Underwriters' Assn., 1944,

322 U.S. 533, 553-554. And for a comprehensive review of the anti-trust laws, see, "Anti-Trust Law", The University of Illinois Law Forum, Vol. 1950, No. 4, pp. 491-672.

11. United States v. Standard Oil Company of California, 1948, D.C. Cal., 78 F. Supp. 850.

12. Standard Oil Company of California v. United States, 1949, 337 U.S. 293.

13. 15 U.S.C.A., Sec. 2. See, United States v. Griffith, 1948, 334 U.S. 100, 105-106; United States v. Paramount Pictures, 1948, 334 U.S. 131, 173-174.

14. 15 U.S.C.A., Sec. 1. See Paramount Famous Corp. v. United States, 1930, 282 U.S. 30, 44; United States v. Masonite Corp., 1942, 316 U.S. 265, 275; Fashion Originators' Guild v. Federal Trade Commission, 1940, 2 Cir., 114 F(2) 80, Note 6.

15. 15 U.S.C.A., Sec. 14. See, Fashion Originators' Guild v. Federal Trade Commission, 1941, 312 U.S. 457, 468-469.

16. Standard Oil Company v. United States, 1949, 337 U.S. 293, 311-313.

17. Timkin Roller Bearing Co. v. United States, No. 353, Supreme Court, decided June 4, 1951.

18. 51 C.J.S., Landlord and Tenant, Secs. 1-3; 32 Am. Jur., Landlord and Tenant, Sec. 2.

19. United States v Standard Oil Co. of California, 1948, D.C. Cal., 78 F. Supp. 850. Richfield contended at the trial that, as to certain leased stations, Standard had admitted that they were operated by "independent contractors". But the conclusion reached in the case was not based upon any admission. Standard contested all the way the validity of the tie-in contracts as to "every type" of station involved. And the conclusion that certain station operators were independent contractors was based upon the facts in the case and not upon any admission by Standard. (See Finding 3, p. 875 of Opinion.)

20. Timkin Roller Bearing Company v. United States, No. 352, Supreme Court, decided June 4, 1951.

21. Kiefer-Stewart Company v. Seagram & Sons, Inc., 1951, 340 U.S. 211, 215; and see, Appalachian Coals, Inc. v. United States, 1933, 288 U.S. 344, 360-361; 376-377; United States v. Yellow Cab Co., 1947, 332 U.S. 218, 227.

22. Appalachian Coals, Inc. v. United States, supra, p. 360.

23. United States v. Masonite Corp., 1942, 316 U.S. 265, 280.

24. 51 C.J.S., Landlord and Tenant, Sec. 156; 32 Am. Jur., Landlord and Tenant, Secs. 66-70; Restatement, Property, Secs. 21,45: California Civil Code, Sec. 761; and see, Smith v. Royal Insurance Company, Ltd., 1940, 9 Cir., 111 F(2) 667, 670-671.

25. Spiritwood Grain Co. v. Northern Pacific Ry. Co., 1950, 8 Cir., 179 F(2) 338, 341.

26. Phelan v. Anderson, 1897, 118 C. 504, 505-506; see, Psihozios v. Humber, 1947, 80 C.A. (2) 215, 220; Camp v. Matich, 1948, 87 C.A. (2) 660-667.

27. Mitchell v. Davis, 1862, 20 C. 45, 47-48; This early case enunciated a rule, which has since become general. 32 Am. Jur., Landlord and Tenant, Sec. 9.

28. United States v. Standard Oil Company of California, 1948, D.C. Cal., 78 Fed. Supp. 850 at 854.

29. See cases cited in notes 21 and 22 and see Associated Press v. United States, 1945, 326 U. S. 115.

30. Pacific Magnesium Co., Inc. v. Westover, 1948, D. C. Cal., 86 Fed. Supp. 644 and cases cited in notes 4-6 therein; Pacific Magnesium Co., Inc. v. Westover, 1950, 9 Cir. 183 Fed. 2d 584.

31. There is a statement in one of the cases to which they refer, Wm. Goldman Theaters, Inc. v. Loew's, Inc., 1945, 3 Cir., 150 Fed. 2d 738 at 743: "The restraint of trade contemplated by statute means restraining competition. United States v. Eastern States Retail L-D, Ass'n., 234 U. S. 600, 34 S. Ct. 951, 58 L. Ed. 1490, L. R. A. 1915A, 788."

In the case to which reference is made in support of this statement, United States v. Eastern States Retail Lumber Dealers Ass'n., 1914, 234 U. S. 600, 601, I find no language capable of being epitomized in this manner.

32. United States v. Eastern States Retail Lumber Dealers Ass'n., supra.

33. United States v. Eastern States Retail Lumber Dealers Ass'n., supra, page 601.

34. Wm. Goldman Theaters, Inc. v. Lowe's, Inc., 1945, 3 Cir 150, 78 Fed. 2d 738, 743.

35. Paramount Famous Lasky Corp. v. United States, 1930, 282 U. S. 30, 44.

36. Federal Trade Commission v. Curtis Company, 1923, 260 U. S. 568. The scope of the case is so limited in Carter Carburetor Corp. v. Federal Trade Commission, 1940, 8 Cir., 112 F(2) 722, 736.

37. United States v. Masonite Corp., 1942, 316 U. S. 265, 280.

38. United States v. United States Steel Corp., 1920, 251 U. S. 417, 451.

39. United States v. United States Steel Corp., supra, p. 451.

40. United States v. Aluminum Company of America, 1945, 2 Cir., 148 F(2) 416, 428.

41. United States v. Aluminum Company of America, supra, p. 428. And see, Standard Fashion Co. v. Magrane-Houston Co., 1922, 258 U. S. 346, 356; M. A. Adelman, "Effective Competition and the Anti-Trust Laws", 1948, 61 Harvard Law Review, p. 1289. It should be added that, in the solution of the problem which confronts us, we must bear in mind the type of legislation which we are interpreting. And cases holding operators of stations of this type *employees* under a state Workmen's Compensation Act (Continental Oil Co. v. Sirhall, 1950, — Colo. —, 222 P(2) 612), or subjecting individual stations to state chain stores taxes (Standard Oil Company of Indiana v. State Board of Equalization, 1940, 110 Mont. 5, 99 P(a) 229; Maxwell v. Shell Eastern Petroleum Products, Inc., 1937, 4 Cir., 90 F(2) 39) do not help. For, in interpreting Workmen's Compensation or taxing statutes, Courts notoriously interpret their terms broadly, so as to achieve the beneficent social aims of the statutes. (See, Fox v. Standard Oil Co., 1935, 294 U. S. 87) Nor, for that matter, are we assisted by the recent decision of the District Court of Appeals of California (Mayes v. Richfield, 1951, 103 A. C. A. 23), which has held Richfield liable to third persons for injuries suffered on the premises of one of the L-O stations. The case was decided upon the theory, submitted to a jury, that, in

view of the public purpose of the business conducted on the premises, the lessor could be held liable, if the leased premises *were not safe for the use intended,* and the condition existed at the time of the transfer.

This decision is in accord with the general view that, while a landlord of leased premises is not ordinarily liable for the injuries occurring thereon, he will be held liable where the property is leased for public purposes,—which the public is expected to enter for the transaction of business (32 Am. Jur., Landlord and Tenant, Sec. 668). So the California Court, in applying this rule to one of the L-O stations, did not make a determination of the nature of the occupancy binding on us.

On May 17, 1951, the Supreme Court of California granted a hearing in the case. This means that the Opinion loses all force as a precedent. For the Supreme Court may repudiate the doctrine announced in it. But even if it should stand, it does not go counter to views here expressed.

42. Richfield seems to find comfort in, and justification for, its position in an article, "Exclusive Dealer Devices of Petroleum Products," by Forrest Revere Black, 1940, 29 Georgetown Law Journal, pp. 438, et seq. The article was written before some of the most important decisions in the field of anti-trust law, including the decisions in the Standard case dealing with restrictive contracts, were made. More, a study of the article shows that what the writer sought to show was various devices resorted to by certain companies in order to *avoid* the consequences of regulatory statutes.

His introductory paragraph reads:

> "In any comprehensive history of government regulation of business in America, one chapter must be reserved to relate *the strange story of the ingenious strategy* of the major oil companies in marketing their products through the so-called 'Iowa Plan' and cognate devices, whereby the operator *simulates* the appearance of an independent dealer and the major producing companies thereby *acquire an exclusive outlet and attempt to evade* the obligations of chain store taxes, social security legislation, Workmen's Compensation

> Laws, public liability insurance and labor troubles from attempts at unionization and collective bargaining" (p. 429) (Emphasis added).

Speaking more specifically of petroleum products, the article states:

> "The retail marketing of petroleum products has gone through several states. The dominant consideration on the part of producers has been a mad race to secure additional retail outlets and increased gallonage, and usually connected with this has been *an attempt to exclude the sale of competitor's products and to control the resale price*" (p. 439-440) (Emphasis added).

While describing the various marketing methods, including what is known as the "Iowa Plan",—the general effect of which is to make the operator simulate the appearance of an independent dealer when he is, in reality, the manager of a chain store,—*the author does not give them his approval* as successful attempts at avoiding the effect of controls. But, even if such methods of evasion appealed to a writer as a lawyer, they certainly *do not deserve* the approval of a Court. In the field of anti-trust regulations, the aim of courts has always been to look behind devices which, under the appearance of innocuous arrangements,—such as exchange of information, listing of customers and the like, involved attempts to restrain and prevent competition and to enthrone monopoly. So here, our problem is to see what the *true relationship* is, regardless of what Richfield and the operators under its denomination *thought it to be*. And, as already appears, what to Richfield may seem *apparent* independence is demonstrably *real* independence, so far as the application of principles of anti-trust law are concerned. So, to apply a philosophical phrase, what to Richfield seems to be mere *appearance*, has to us, all the indicial of *reality*.

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IN THE

Supreme Court of the United States

October Term, 1951.

No. 395.

RICHFIELD OIL CORPORATION,

Appellant,

vs.

UNITED STATES OF AMERICA.

APPELLANT'S OPENING BRIEF.

This is a direct appeal by Richfield Oil Corporation, defendant below, from a judgment of the District Court of the United States for the Southern District of California.

Opinion Below.

The Opinion of the District Court [R. 71-100] is reported in 99 Fed. Supp. 280 (D. C. Cal., 1951).

Jurisdiction.

The Judgment of the District Court against appellant was entered on August 2, 1951. [R. 165-171.] Petition for Appeal [R. 193-4] was filed and the appeal allowed [R. 213-4] on September 4, 1951.

The jurisdiction of this Court is conferred by Section 2 of the Expediting Act of February 11, 1903, as amended

(32 Stat. 823; 36 Stat. 1167; 58 Stat. 272; 62 Stat. 989; 15 U. S. C. A. 29).

The following decisions sustain the jurisdiction of the Supreme Court to review the Judgment on direct appeal in this cause: *Interstate Circuit, Inc. v. United States,* 306 U. S. 208; 83 L. Ed. 610; *United States v. Crescent Amusement Co.,* 323 U. S. 173; 89 L. Ed. 160; *Associated Press v. United States,* 326 U. S. 1; 89 L. Ed. 2013; *United States v. Yellow Cab Company,* 338 U. S. 338; 94 L. Ed. 150.

Probable jurisdiction was noted on November 13, 1951.

Statutes Involved.

Section 1 of the Act of July 2, 1890, as amended (26 Stat. 209; 15 U. S. C. A. 1), commonly known as the Sherman Act, is as follows:

> "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal: . . ."

Section 3 of the Act of October 15, 1914, as amended (38 Stat. 731; 15 U. S. C. A. 14), commonly known as the Clayton Act, is as follows:

> "It shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies, or other commodities, whether patented or unpatented, for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price,

on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce."

Statement.

1. HISTORY OF THE LITIGATION.

The United States brought this suit in equity in April, 1947, to enjoin alleged violations by appellant, Richfield Oil Corporation (herein called "Richfield") of Section 1 of the Sherman Act and Section 3 of the Clayton Act in its contracts and agreements with service station operators and dealers. [R. 1-11.]

The case involves two entirely separate and distinct types of service stations:

(1) L. O. STATIONS—These are stations owned by Richfield or leased by Richfield under long-term lease from the owner thereof.[1] The L. O. station is leased from time to time by Richfield to an operator (a person other than the owner-lessor) under a written lease agreement for an indefinite period of time, subject to termination by either Richfield or the L. O. operator on twenty-four hours' notice. [Stipulation of Facts—Ex. A; R. 399-400, 762.]

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[1]These stations are commonly known and designated by Richfield as "L. O. stations" (L. O. referring to "leased out"); and the operators installed in such stations by Richfield from time to time are known and designated as "Operators."

(2) DEALER STATIONS—These are stations owned by the dealer or leased by him from a lessor other than Richfield. The dealers with whom Richfield has made contracts fall into two separate categories named respectively after the identifying form numbers of Richfield's applicable printed contract forms, to wit, (a) the 337 Dealer,[2] and (b) the 3-C Dealer.[3]

Richfield has entered into, with each 337 and 3-C dealer, a written sales contract providing for the sale of specified quantities of petroleum products.[4] With certain of the 337 dealers, Richfield has made written painting agreements providing for the painting by Richfield of their stations. As a part of the transaction with the 3-C dealer, Richfield has leased his station and has subleased it back to him. [Stipulation of Facts—Ex. A; R. 401-4, 762.]

In support of its charges concerning both types of stations, the government alleged the following: that Richfield

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[2]The sales contract between Richfield and any service station dealer owning or so controlling a service station is commonly known and designated by Richfield as a "337 Deal"; and such service station dealer is known and designated as the "Dealer" or the "337 Dealer."

[3]The type of transaction between Richfield and any service station dealer owning or so controlling a service station which involves a sales contract, a lease to Richfield by the dealer and a sublease by Richfield to the dealer is commonly known and designated by Richfield as a "3-C Deal"; and such service station dealer is known as the "Dealer" or the "3-C Dealer."

[4]Prior to August, 1948, Richfield made sales contracts with 3-C dealers on an entire requirements basis; but since such time Richfield has made no sales contracts on other than a specified quantity basis. By negotiation with the 3-C dealers, Richfield secured the change to a specified quantity basis of all but four contracts made before August, 1948. [Stipulation of Facts, Ex. A; R. 402, 762.]

has entered into "contracts, consisting of written and oral agreements and understandings . . . between itself and independent service station operators" [Compl. par. 16; R. 6] in the states of California, Oregon, Washington, Nevada, Arizona and Idaho; that the written agreements consisted of written service station leases, sales contracts and painting agreements [Compl. pars. 17-19; R. 6-7]; that in addition to such written agreements, Richfield has entered into "supplemental *oral* contracts, agreements and understandings with *each*" of the approximately 2600 "independent service station operators,"[5] which oral contracts restrict the brands of petroleum products and automotive accessories handled by the independent service station operators to those brands designated and approved by Richfield [Compl. pars. 18 and 19; R. 6-7]; and that Richfield required such independent service station operators to enter into and adhere to the oral contracts by threats of cancellation of the written contracts, by inspection, policing and supervision of the activities and sales of the independent service station operators at the 2600 service stations and by actual cancellation of the written leases or written sales contracts of those independent operators who refused to conform to the oral contracts. [Compl. par. 20; R. 7-8.] It was alleged that these contracts unreasonably restrained and substantially lessened competition in interstate trade and commerce in petroleum products and automotive accessories. [Compl. par. 16; R. 6.]

The complaint did not charge a monopoly or attempted monopoly by Richfield in any line of commerce. The complaint did not charge any conspiracy or combination.

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[5]The 2600 "independent service station dealers" so referred to include (a) the L. O. operators and (b) the Dealers, both 337 and 3-C. [Compl. pars. 18-19; R. 6-7.]

The issues raised by Richfield's responsive pleadings differed as to (1) the L. O. stations, and (2) the Dealer stations.

With respect to the *L. O. stations,* Richfield denied that the L. O. operators are "independent" service station operators under the facts and circumstances admitted and alleged therein. Richfield admitted and alleged that each of the L. O. stations was acquired or constructed by Richfield as an outlet for the sale of Richfield's petroleum products to the motoring public; that each L. O. operator has been selected and trained by Richfield and has been permitted by it to occupy Richfield's L. O. service station and use its land, buildings, facilities and equipment on a temporary basis, subject to termination on twenty-four hours' notice by either party; that the occupancy of the L. O. service station by any such operator is upon the understanding that Richfield has the right to designate, as a condition upon the operator's continued occupancy thereof, the manner of such operator's maintenance and operation of the station, including, among other matters, the appearance and cleanliness thereof and the nature and extent of the services to be rendered to the motoring public, and upon the understanding that only Richfield's products be handled or sold in such service station, subject to such exceptions as Richfield might permit from time to time. Richfield alleged that the relationship between Richfield and any such operator is analogous to the relationship of agency or to the relationship of employment for the purposes of and within the scope and meaning of the Sherman Act and the Clayton Act, respectively; and that under the facts and circumstances so admitted and alleged, the trade, custom and business of each of Richfield's L.

O. stations, as conducted by any such operator, is Richfield's trade, custom and business and is not the subject matter of competition. [R. 23-4.]

With respect to the *Dealer stations* (both 337 and 3-C), Richfield denied any contracts, agreements or understandings, written or oral, with the independent service station dealers by which any of such dealers is required to handle only the brands of petroleum products or automotive accessories designated or approved by Richfield, or is required to acquire automotive accessories from sources designated by Richfield. Richfield denied that it has required such dealers to handle only Richfield's petroleum products or Richfield's "sponsored" automotive accessories, either by threats of cancellation of contracts or by inspection, policing or supervision. Richfield denied that it has cancelled the written agreement of any independent service station dealer because of the refusal of such dealer to conform to any such alleged oral contract, agreement or understanding. [R. 18-20.]

Richfield further denied that its contracts unreasonably restrain or substantially lessen competition in interstate trade or commerce.

The case was tried in the District Court during May and June, 1951. On July 2, 1951, the District Court filed its Opinion. [R. 71-100.] The Findings of Fact and Conclusions of Law herein were filed on August 2, 1951 [R. 133-165]; and the Judgment herein in favor of the government was filed and entered on August 2, 1951. [R. 165-171.] Therein it was determined that Richfield's agreements with the L. O. operators and the Dealers (both 337 and 3-C) violate both Section 1 of the Sherman Act and Section 3 of the Clayton Act.

Richfield thereafter filed a motion under Rule 52, F. R. C. P. to amend the Findings, Conclusions and Judgment. [R. 172-193.] Such motion was denied by the District Court on August 17, 1951. [R. 193.]

We believe it material to the consideration of the questions here presented to set forth in this statement the following salient facts, all of which are established by uncontradicted evidence, excepting in those few instances wherein attention is expressly called to conflicts.

2. RICHFIELD'S TWO METHODS OF MARKETING.

Richfield makes its petroleum products available to the motoring public by marketing the products on two entirely separate levels: (1) by soliciting the business of dealers who are established in their own service stations; and (2) by having Richfield's own service stations as outlets to supplement the volume of products sold by it to the dealers.

The dealers either own their respective places of business or lease them from a lessor other than Richfield [Stipulation of Facts—Ex. A; R. 401-2, 762] and are referred to as "independent service station dealers." [R. 1566.] They are considered to be Richfield's customers. [R. 1628, 1142-3.]

There is intense competition for the business of independent dealers among the various oil companies distributing petroleum products. Richfield continuously solicits the business of the dealers but constantly loses some of such customers to competitors. [R. 1580-1, 1619; also Ex. X, R. 515, 1762.]

Richfield's reason for establishing and having L. O. stations is its experience that it cannot depend upon a suffi-

cient volume of business from independent dealers to maintain a stable market for the products produced by it. [R. 1580-1.]

There are other factors hereinafter discussed which increased Richfield's need for service station outlets in the post-war period and led to a large expenditure for the purchase of land and the erection of L. O. stations. [R. 1581-4.]

3. RICHFIELD'S MARKETING ORGANIZATIONS.

Richfield's contacts and relationships with the independent dealers and with the L. O. operators differ to such an extent that Richfield has maintained, within its marketing department, two separate and parallel organizations[8] to deal with them respectively.

The *sales organization* consists of seventy-five (75) men classified as salesmen who are responsible in Richfield's three divisional territories to assistant division

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[8]In passing on those errors assigned to certain findings of fact pertaining to Richfield's relationship with the 337 and 3-C Dealers (as for example, Assignment II(1)(g) [R. 206], directed to the finding that Richfield inspected, policed and supervised the activities and sales of 337 and 3-C dealers) it will be helpful and at times necessary to ascertain whether the particular testimony asserted by the government to support a finding was given by or with reference to a salesman or a merchandiser.

There was not absolute consistency by witnesses in use of terminology, *i. e.*, to "dealer" to refer to the independent dealers only, and to "operator" to refer to the operators of Richfield's L. O. stations only. The word "dealer" was used on occasion by some witnesses to refer to the L. O. operators rather than to the independent dealers. For example, see Footnote 78.

Accordingly, some testimony ostensibly indicating certain practices with "dealers" will, on analysis in the light of the difference between the sales and merchandising organizations, be shown to relate only to L. O. stations and their operators and not to 337 or 3-C Dealer stations.

managers in charge of "operations." The salesmen's functions and responsibilities are limited to the solicitation of the business of the independent dealers and of commercial and consumer customers. The salesmen have nothing to do with the L. O. stations or the L. O. operators. [R. 1565-6, 1571-4. See the Job Classifications and Work Habits of the Salesmen—Exs. N-3, N-4; R. 478A-487, 1573.]

The *merchandising organization* consists of one hundred ten (110) men classified as merchandisers who work in the three divisions under assistant division managers in charge of "merchandising." The functions and responsibilities of the merchandisers are limited to the operation of the L. O. stations. The merchandisers have nothing to do with the independent dealers, either 337 or 3-C. [R. 1565-6, 1571, 1574, 1718. See the Job Classifications and Work Habits of the Merchandisers, Exs. N, N-1 and N-2; R. 464A-478, 1569, 1570-1.]

4. DETAILED STATEMENT CONCERNING THE L. O. STATIONS.

A. Nature of L. O. Stations.

The L. O. stations are of four types:

(a) Those in which both the land and improvements are owned by Richfield;

(b) Those in which Richfield owns the improvements on leased land;

(c) Those as to which Richfield has arranged with the property owner to improve the site with a station conforming to Richfield's design and specifications which is then leased to Richfield; and

(d) Leased stations, including those erected by a property owner for Richfield, but not conforming to its specifications. [R. 1566, 1755.]

Of the 1343 L. O. stations held by Richfield as of December 31, 1950, in excess of 81% thereof were originally created as service stations by Richfield and had never theretofore been used or equipped as service stations handling any petroleum products. [Ex. W; R. 515, 1756.]

B. Comparative Statistics re L. O. Stations.

The total number of L. O. stations held by Richfield as of December 31st of each year from 1938 to 1950, inclusive, is set forth in Exhibit M-4. [R. 432-6, 1557.] As of December 31, 1948, Richfield's L. O. stations constituted 3.28% of the total number of service stations in the area in which Richfield does business. [Ex. M-4; R. 432-6, 1557.]

The volume of gasoline sold at Richfield's stations by years and comparisons of such volume with the total sales by all companies to all stations and with the volume of taxable sales by all companies in the same marketing area are set forth in Exhibit M-5. [R. 437-40, 1559.] For example, for the year 1950, the volume of gasoline at the L. O. stations was 4.9% of the volume sold by all companies to all stations and was 3.18% of the taxable sales of motor fuel by all companies.

More relevant comparative statistics[7] are shown in the comparison annually of gallons sold at Richfield's L. O.

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[7]The comparison of sales to the quantity available for sale was considered to be most relevant in *U. S. v. Columbia Steel Co.*, 334 U. S. 495; 92 L. Ed. 1533 (1948).

stations to total gallons of gasoline manufactured and available for sale in Richfield's marketing area. [Ex. Z; R. 517, 1768.] For example, for the year 1950, gasoline sold at Richfield's L. O. stations constituted 2.71% of the total gallons of gasoline manufactured.

C. Richfield's Business Purpose in Acquiring and Having L. O. Stations.

Richfield has established L. O. stations to provide a stable outlet for its petroleum products to supplement the quantity of petroleum products which it is able to sell to the independent dealers. [R. 1580-1.]

In addition to the loss of business of independent dealers due to the competition of other companies [R. 1580-1], other business factors contributed to an increase in Richfield's need for additional service station outlets. They consisted of (1) Richfield's enlarging, at the request of the government during World War II, by 32½% (to wit, 10,705 barrels per day) the capacity of its refinery facilities for the manufacture of gasoline [R. 1581-2, 1787-93; Exs. AE, R. 27-44, 1787; AE-1, R. 44-71, 1787; AE-2, R. 26, 1789; AE-3, R. 27, 1789; and AF, R. 535, 1793]; (2) the discontinuance by the government of large purchases of gasoline from Richfield immediately following the end of the war, at which time the government's purchases were cut down from 17,000 barrels to 2,000 to 3,000 barrels per day[8] [R. 1581-2, 1793-4; Ex. AG,

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[8]This reduction of 14,000 barrels per day is the equivalent of 17½ million gallons of gasoline per month or more than the sales potential of 2500 L. O. units, calculated at the average gallonage of an L. O. unit during the war of 6800 gallons per month. [R. 1616, 1703.]

R. 536, 1794]; (3) the discovery of new oil fields [R. 1582]; and (4) the increase in demand for petroleum products due to the increase in population. [R. 1582; Ex. M-13, R. 463-4, 1561.]

D. Source of Operators and Manner of Their Selection for Installation in the L. O. Stations.

As a rule, Richfield has a waiting list of applicants for its L. O. stations. [R. 1586.][9] The merchandisers are instructed to procure prospective L. O. operators from a number of different sources including employees of other L. O. operators, advertising in newspapers, and contacting businessmen in the community. [R. 1719.]

Few, if any, L. O. operators had been independent dealers in their own stations prior to becoming L. O. operators in Richfield's stations. [R. 1586-7.]

In the selection of a person as a prospective operator of one of its stations, Richfield is interested in an applicant's qualifications in respect to character, stability, reputation in the community and personal appearance. [R. 1587, 1719-20.] W. G. King, Jr., Richfield's Vice President in charge of marketing, testified:

> "We endeavor to be very careful in our selection of operators. We are looking for men of good character, of stability, because we are turning over a valuable property to them. We inquire into how long they have lived in the community, and their family,

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[9]Two of the government's witnesses who were L. O. operators each testified that they were looking for stations and requested Richfield to permit them to operate one of Richfield's stations. [Cooper, R. 830-1; Pearce, R. 840-1.]

and past business connections, and experience. In other words, we try to select people of good character who are stable, who will be a credit to Richfield in meeting the public." [R. 1587.][10]

In interviewing prospective operators Richfield used various forms entitled, respectively, "Dealer Franchise Application," "Application for Prospective Sublessees," "Application for Employment" [Stipulation of Facts, Ex. A; R. 405-11, 762], all designed to reveal the applicant's background, qualities and character references. [R. 1719-20.][11]

L. O. operators were sometimes promoted from one station to another or from a station to a salaried position in the marketing department. [R. 1149, 1730-1.]

E. Matters of Which Prospective Operator Is Informed Prior to His Installation in Station.

It is standard practice for the merchandisers to inform and instruct each prospective operator of Richfield's requirements and practices at its L. O. stations concerning the following matters:

(i) that the operator and his helpers wear approved Richfield uniforms [R. 1720];

(ii) that the station be manned by a minimum crew of helpers [R. 1720-1];

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[10]See similar testimony by former merchandisers who were government witnesses. [Miner, R. 756; Pitman, R. 875.]

[11]Government witnesses testified similarly to the use of such forms. [Miner (merchandiser), R. 765-6; de Lucchi (L. O. operator), R. 1379; Ex. K, R. 425, 1379.]

(iii) that the station remain open certain designated hours [R. 1721];

(iv) that the operator and his helpers maintain a standard of personal cleanliness in appearance [R. 1721];

(v) that the operator and his helpers maintain designated pump island procedure in dealing with the public [R. 1721-2];

(vi) that Richfield's petroleum products be handled exclusively [R. 1723];

(vii) that approved automotive accessories be secured from Richfield's local distributor if the latter is able to supply the operator [R. 1723];

(viii) that the operator follow directed procedure in the use of Richfield's credit cards [R. 1723-4];

(ix) that the operator not display unapproved or competitive signs [R. 1724];

(x) that the operator attend training meetings [R. 1724];

(xi) that Richfield's merchandiser will periodically inspect the station and the operator's maintenance and operating methods and instruct him on any matters determined to be corrected [R. 1725, 1732];

(xii) that the incoming operator shall acquire from the outgoing operator the latter's stock of Richfield petroleum products, approved automotive accessories and service station tools; and that the incoming operator shall not acquire other items from the outgoing operator [R. 1725-6];

(xiii) that Richfield has an obligation to assist the operator in disposing, at termination of his occupancy, of his stock of Richfield petroleum products and approved items of automotive accessories and equipment [R. 1595-6, 1726]; and

(xiv) that the operator does not acquire or develop any good will and will not be permitted to make a charge for any intangible business value to any successor operator in the station. [R. 1728-9.]

Further, it is Richfield's practice to inform the prospective operator of the necessity of his signing a Form 542 Lease [Ex. 1-G; R. 251-2, 567] and to discuss with him the clause therein permitting termination by either party on twenty-four hours' notice. It is explained to him that the right to terminate is mutual. "We insist on its being there for our own protection and for the protection of our other L. O. dealers, so that we can recover possession if the operation becomes substandard, or anything of that nature." [R. 1729.]

Richfield's basic rental policy of one cent per gallon with a certain stipulated minimum is also explained to the prospective operator. [R. 1729-30.]

F. Operation and Supervision of L. O. Station.

The operator bears certain expenses relating to the operation of the station. He furnishes small tools (movable equipment such as lubrication and tire equipment) and pays for the inventory of petroleum products and accessories. While Richfield bears all losses on sales made by the operator to persons holding Richfield credit cards, the operator is responsible for credit extended by him to other persons. [R. 663-4.]

The petroleum products are not consigned by Richfield to the operator, but are purchased by him. [R. 1655-6.]

Richfield does not pay the operator a salary or wages [R. 661-2] nor does it pay social security taxes or premiums on workmen's compensation insurance on account of the operator. [R. 666-7.]

At the time of installing the operator in the L. O. station, the merchandiser spends substantial time with the operator instructing him in the general practices and policies to be maintained at all L. O. units. Thereafter the merchandiser calls on the operator from two days a week to once a month, depending on the operator's ability. [R. 1731-2.]

The merchandiser uses Richfield's Form 1071 [Ex. V; R. 497-514, 1733] as a guide in training the operator. [R. 1733.]

The merchandiser goes over the station with the operator every sixty days and together they fill in Richfield's Form 205 [Ex. C; R. 412, 768] which informs the operator of the matters to be corrected and discloses whether the operator is making progress. [R. 1732.]

G. Facilities and Financial Help Furnished by Richfield to L. O. Operators.

Richfield has made a practice of rendering to the L. O. operators financial assistance of four types:

(1) Richfield has furnished each L. O. operator with a fully equipped service station (excepting only small tools and lubricating equipment to be furnished by the operator) [R. 1590-2, 1670-1] at a rental substantially less than the fair rental value of the station.

Rentals charged to L. O. operators do not exceed one cent (1¢) per gallon. [R. 1587-9, 1669.] On the other hand, the fair rental value of an equipped service station is not less than one and one-half cents per gallon [R. 1758], an amount 50% in excess of that charged to the L. O. operators. Exhibit AA [R. 518, 1778] shows a schedule of the excess of rentals paid by Richfield to the property owners on those L. O. stations leased by Richfield over and above rentals on the same stations received by Richfield from the L. O. operators. For example, during the year 1950, rentals paid by Richfield amounted to $1,442,099.89, while rentals received from the L. O. operators from the same stations amounted to $956,563.35. Richfield, therefore, absorbed, without reimbursement, rentals to the extent of $485,536.54, an amount equal to more than 50% of the rentals so received.

Many of these stations represented an investment of $25,000.00 to $35,000.00, "a property that would be far beyond the average individual's ability to acquire otherwise." [R. 1590.] Richfield's investment in L. O. service stations as of December 31, 1950 was $19,542,082.58, of which the cost of land purchased represents $11,213,657.33, and the cost, after depreciation, of certain improvements installed $8,328,425.25.[12] [Ex. AB; R. 519, 1779.]

(2) Richfield has maintained a practice of waiving or reducing the operator's rentals, sometimes to $1.00 per

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[12]It is not correct, as stated in the District Court's Opinion [R. 77], that the latter figure was deducted as depreciation for tax purposes over a five-year period. The testimony concerning amortization for tax purposes over a five-year period pertained to the additions to the refinery facilities installed at the request of the government during the war. [R. 1786.]

month, whenever the operator has experienced difficulty in developing a satisfactory volume of business or if he was confronted with conditions beyond his control; "in other words, whenever it was necessary to assist him in operating the station." [R. 1588.]

(3) Richfield has subsidized L. O. operators during "price wars" to the extent of their full margin of profit if they reduced prices to meet competition. [R. 1592-4, 1705; Ex. F, R. 419-21, 908.]

(4) Richfield has made a practice of lending money to L. O. operators so that they can carry adequate inventories of petroleum products. [R. 1590.]

H. Termination of L. O. Operators.

In Richfield's practice, the following circumstances have warranted Richfield's terminating the tenure of an L. O. operator: insufficient inventory, operation of a dirty station, failure to maintain sufficient operating hours, insufficient crew of helpers, absentee operation or failure to carry Richfield's products exclusively. [R. 1734-5, 1741.]

5. DETAILED STATEMENT CONCERNING THE 337 STATIONS.

Richfield solicits the business of independent dealers on the basis of either its so-called 337 transaction or its so-called 3-C transaction. Whether the solicitation is on a 337 or 3-C basis depends upon competition. Richfield tries to secure the business on the basis of its 337 deal; but where it has to make some "investment" to meet competitive offers, Richfield endeavors to negotiate the transaction on the basis of its 3-C deal. [R. 1619, 1681-2.]

A. NATURE OF THE WRITTEN CONTRACT.

In the 337 transaction, Richfield has entered into a written contract with the 337 dealer providing for the sale of specified quantities of petroleum products. Richfield's printed form of sales contract has gone through successive reprints from 1937 to date. [Ex. A, R. 402-3, 762; Exs. 5, 5-B, 5-D and 5-G, R. 268, 270, 272, 276, 567.]

Forms used prior to 1948 contained provision for a specified term with a right to Richfield as seller to terminate the agreement on five days' written notice. All forms used subsequent to August 1948 contained provision for termination by either Richfield or the 337 dealer on thirty days' written notice; and sales contracts then in existence on prior forms were modified to provide for similar mutual rights of termination. [Stipulation of Facts, Ex. A; R. 402-3, 762.]

None of the successive forms of sales contracts have ever provided for "exclusive dealing" by the dealer in any petroleum products. The contract is not an "entire requirements" contract (of the nature involved in *Standard Oil Company of California v. U. S.*, 337 U. S. 293; 93 L. Ed. 1371); nor does it forbid or preclude the dealer from buying additional quantities of any of such petroleum products from any supplier of his choice at any time. The contract provides:

> "Seller agrees to sell and deliver to Buyer and Buyer agrees to purchase from Seller, as ordered by Buyer during the term hereof, the following petro-

leum products in calendar monthly quantities not greater than the maximum nor less than the minimum amounts hereinbelow specified for the respective products. For fractional monthly periods said amounts will be duly prorated.

	Minimum	*Maximum*
Gasolines	..... gals.	..... gals.
Lubricating Oils	..... gals.	..... gals.
Greases	..... lbs.	..... lbs."

[Ex. 5-G; R. 276, 567.]

The dealer's obligation is limited to the purchase of the minimum quantities specified. The dealer has the right to purchase additional quantities of such products up to the maximum quantities specified. [R. 619, 1620, 1694.]

The manner of arriving at the minimum quantity to be inserted in the contract has been the subject matter of instructions by Richfield's management. Prior to 1948 Richfield's instructions to its sales representatives were to insert such quantity as might be reached by mutual agreement between the salesman and the dealer. In August of 1948, on the advice of its legal department following Judge Yankwich's decision in *United States v. Standard Oil Company of California,* 78 Fed. Supp. 850, Richfield issued instructions to its salesmen that in negotiating a 337 sales contract, the designated minimum quantity of gasoline to be inserted in the contract ***could not exceed*** 85% of the 337 dealer's known past sales. Early in 1950 these instructions were changed to reduce the

specified quantity to a figure *not in excess* of 75% of the dealer's past sales. [R. 1620-1, 1707-8.]

Exhibit Y [R. 516, 1766] is a compilation of all 337 and 3-C sales contracts in effect as of February 28, 1951. The compilation shows that the quantities which the dealers obligated themselves to purchase were substantially less than the respective dealers' anticipated requirements of such products based on their past experience.[13]

Never has Richfield contracted with any 337 dealer on the basis of the latter's entire requirements. [R. 1620.] When Richfield intended to seek and procure the obligation of a dealer to purchase his entire requirements, as was the case only with those 3-C dealers with whom Richfield entered into sales contracts between 1945 and 1948, as hereinafter discussed, Richfield's contracts so specified. [R. 1642-3; Ex. 4-B, R. 265, 567.]

The 337 contract has always been limited to petroleum products. Richfield has made no contract with any 337 dealer covering automotive accessories. [R. 1627.]

Richfield has also entered into a so-called written "painting agreement" with certain of the 337 dealers. [Stipulation of Facts, Ex. A; R. 403, 762.] A paint-

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[13]The compilation was made (a) by comparing the quantity which each dealer obligated himself to buy in his sales contract (*i. e.*, the so-called "minimum") with such dealer's average monthly purchases for the year preceding the date of his contract; and (b) after the ratio of obligation to past experience was so determined for each contract, by assembling all of the sales contracts into four groups, each group relating to a different span of ratios.

ing agreement was not entered into with each 337 dealer but was used only when the dealer desired that his station be painted. [R. 1621.] For example, of the 1361 sales contracts in effect as of December 31, 1950, 267 were made with dealers who signed no painting agreement at all; 853 sales contracts had been made concurrently with painting agreements; and 241 sales contracts had been made without any concurrent painting agreement but a painting agreement was subsequently entered into at the time the station was painted. [R. 1621-3; Ex. 26-A, R. 335-6, 1540.]

The painting of service stations by supplying oil companies is a practice which has been developed by competition. [R. 1622, 1083-4.] The dealer desires to have his station painted in the identifying colors of his supplier for advertising value and for the preservation of his station. [R. 1622.]

Richfield has never required dealers to make a painting agreement or to have their stations painted in Richfield's colors as a condition upon Richfield's sale of gasoline to them. [R. 1623.]

The cost of painting a station varies from $500 or $600 to $1200 or $1500 which explains Richfield's reason for not painting a station unless the dealer enters into a painting agreement obligating himself to repay Richfield the cost of the painting if the dealer fails to buy the fixed quantity which he is obligated to buy under the sales contract. [R. 1624-5, 1693-4.]

B. WHETHER RICHFIELD ENTERED INTO ORAL CONTRACTS, AGREEMENTS OR UNDERSTANDINGS WITH THE 337 DEALERS REQUIRING THEM TO HANDLE ON AN EXCLUSIVE BASIS PETROLEUM PRODUCTS OR AUTOMOTIVE ACCESSORIES MANUFACTURED OR SPONSORED BY RICHFIELD.[14]

W. G. King, Jr., testified unequivocally that there was no such oral contract, agreement or understanding and that "I have issued instructions that no oral agreements are to be made, and that the entire agreement between Richfield and customer must be represented by our customary contract provided for that purpose." [R. 1627-8.]

Richfield has not authorized any of the personnel in its marketing department to make any oral agreement with any dealer. Richfield has delegated authority concerning the making of written contracts, including the written sales contracts and painting agreements above described; and under that authorization such agreements may be signed by designated persons only if there are no changes or alterations in the forms as printed. [R. 1574-9; Exs. O and O-1, R. 488A to D, 1576-7.]

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[14]Assignment of Error II-1-(a) [R. 205-6] is directed against various designated findings of the District Court determining that Richfield entered into oral agreements of such nature with the 337 and 3-C dealers.

Notwithstanding that the District Court found (Finding 33) that there was such an oral agreement with *each* of the 337 and 3-C dealers, there is no evidence in the record of an oral agreement with any of the 337 or 3-C dealers. Pages 125 and 126 of this Brief contain a statement and analysis of all testimony pertinent to this phase of the case.

C. Buying Habits of 337 Dealers.

Some seventy-five percent (75%) of the 337 dealers handle non-Richfield lubricating oils and greases and automotive accessories, and display signs advertising that fact. [R. 1706-7.]

In so far as gasoline is concerned, the 337 dealers in practice purchased all of their requirements from Richfield during the period of time that such dealers purchased any gasoline from Richfield, and did not at the same time purchase or handle the gasoline of a competitive supplier in the same station. [R. 1637-9, 1693, 1706.]

In explanation of the reason for such result, Mr. King testified:

> "Well, it is my opinion, as I expressed here a few minutes ago, that the vast majority of dealers today are catering to the buying habits of the public who prefer to patronize stations specializing in the products of some one company. And it has further been our experience that if a dealer becomes dissatisfied with Richfield, either our service or products, that he just cancels his contract and we are entirely through at his station—if he sees fit to stop purchasing from Richfield, why, certainly he can do so. We have found out that they do it whether they have a contract or not." [R. 1639-40.]

Many 337 dealers discontinued completely the handling of Richfield gasoline, both prior to the expiration of their respective sales contracts and at the expiration thereof. [R. 1677-9, 1687, 1693-4, 1706.]

The existence of a painting agreement did not prevent or deter a dealer from discontinuing his purchases of Richfield gasoline, either prior to or at the expiration of

his sales contract. The compilation of dealer accounts lost [Ex. X; R. 515, 1762] shows that of 407 accounts so lost prior to the expiration of the contract, the dealers of 303 (representing 74% of the total) had painting agreements in effect providing for their repayment to Richfield of the cost of painting because of such discontinuance.

D. Split Pump Accounts.

On June 16, 1938, W. T. Dinkins, the then head of Richfield's marketing department, issued to his three division managers (one of whom was W. G. King, Jr., subsequently Dinkins' successor as Vice President) instructions to "discontinue all split pump resale accounts." [Ex. 9; R. 284, 658.]

Pursuant to those instructions Richfield then withdrew from the forty or fifty split pump accounts which it then had, but without making any public announcement to the trade in connection with such withdrawal. [R. 1635-6.] While these instructions were not rescinded, they became meaningless as time went on. [R. 659, 1636-7.]

The reason the instructions became meaningless, as explained by Mr. King, was a change in buying habits which resulted in dealers, as a matter of preference and volition, confining themselves to gasoline of one supplier at a time. Just prior to World War II, 98% of the independent dealers operated their stations on the basis of handling the gasoline of one supplier only. This transition in the buying preference of the overwhelming majority of the independent dealers was responsive to a change commencing in the 1930's in the buying habits of the motoring public to patronizing stations which specialized in one

supplier's gasoline. Less than 2% of the independent dealers are presently operating split-pump stations. [R. 1636-7.]

Richfield *does not solicit* the business of those *particular dealers* operating the less than 2% split pump stations. Those stations are not considered by Richfield as desirable business because of their facilities, type of service, manner of operations, etc. [R. 655, 1638.]

On the other hand (with the sole exception of those independent dealers solicited on a 3-C sales contract basis during the period of time from 1945 to August of 1948 when the same were on an "entire requirements" basis), Richfield has not solicited the business of any independent dealer on the basis of any agreement or understanding that he buy all of his requirements of gasoline or other petroleum products from Richfield. [R. 1620, 1627, 1638, 1644.]

The business of those independent dealers which Richfield seeks is solicited on the quantity basis above described, with the dealer not being permitted to obligate himself to purchase in excess of 75% of his past experience. [R. 1620-1, 1707-8.] Richfield hopes that such independent dealers will want to buy all of their gasoline from Richfield, but it does not impose any such obligation or requirement on any of them. [R. 1678-9, 1688.]

Mr. King did not recall any instance where a 337 dealer had elected to install a competitor's gasoline while at the same time purchasing Richfield's gasoline. [R. 1678.] With the sole exception of one isolated incident occurring in 1941 and testified to by McRae, a former 337 dealer [R. 1224-6], the government did not offer proof of any instance in which any independent dealer

whose business was solicited by Richfield announced to Richfield his desire or intention to handle at the same time gasoline of both Richfieid and some other supplier, or of any instance occurring during the period of twelve years prior to the trial when Richfield either refused initially to sell or discontinued sales to any 337 dealer who desired to operate a split pump station.

E. Termination of 337 Sales Contracts.

Other than the forty to fifty split pump accounts from which Richfield withdrew upon issuance of the June, 1938 letter of instructions [R. 1635-6], Richfield has never terminated a sales contract prior to its stated expiration, excepting only where the 337 dealer himself had discontinued entirely his purchases of gasoline from Richfield, following which occurrence Richfield at times gave notices of termination to serve one of two purposes: either to effect collection under the painting agreement if one was in existence with that particular dealer, or to clear Richfield's files of inactive contracts. [R. 1630-5.]

Mr. King had no knowledge of the termination of any 337 sales contract under circumstances where the 337 dealer had failed to buy the agreed quantity of gasoline, or had purchased gasoline from another supplier, or had failed to buy oil or grease from Richfield, or had posted competitive signs, or had purchased or stocked competitive petroleum products, or had purchased or stocked non-sponsored automotive accessories, or had purchased sponsored accessories from a non-Richfield TBA (tires, batteries and accessories) distributor. [R. 1631-4.]

Although the Complaint alleged in paragraph XX that Richfield had made threats, both express and implied,

that it would cancel the sales contracts unless the alleged exclusive dealing oral understandings were adhered to and also alleged that "in instances too numerous to be herein mentioned, defendant has actually cancelled * * * the sales agreement of an independent service station operator who refused to conform to the oral contracts, agreements and understandings complained of herein" [R. 7, 8], no evidence of any instance of a threat[18] of cancellation or of an actual cancellation was offered by the government.

F. Comparative Statistics Re the 337 Dealer Stations.

As of December 31, 1948, Richfield had sales contracts with 1107 dealers of the 337 type which constituted 3.08% of the total number of service stations in the area in which Richfield does business. [Ex. M-4; R. 436, 1557.]

For the year 1950, the volume of gasoline sold to 337 dealer stations was 2.03% of the volume sold by all companies to all stations and was 1.33% of the taxable sales of motor fuel by all companies. [Ex. M-5; R. 437-40, 1559.]

For the year 1950, gasoline sold to 337 dealer stations constituted 1.14% of the total gallons of gasoline manufactured and available for sale in Richfield's marketing area. [Ex. Z; R. 517, 1768.]

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[18]It should be noted that government witness Duarte (a TBA distributor and commission agent) testified that sometime before 1946 he was asked by a Richfield salesman to contact 337 dealer Koenen "to see that he got rid of his competitive oil, that Richfield Oil Company had painted his unit, and if he did not get rid of it, they would cancel his lease"; but Duarte did not testify to having told Koenen of the suggested cancellation. [R. 724.]

G. Inspection, Supervision and Control

Notwithstanding that the District Court found (Finding 29) that Richfield "inspects, polices and supervises the activities and sales" of all L. O. operators and all 337 and 3-C dealers, there is no evidence in the record of anything other than normal sales activities by Richfield's salesmen in their sales solicitation of the business of the 337 dealers. Pages 126 to 131 of this Brief contain a statement of all testimony pertinent to this phase of the case. Such testimony does not disclose any acts which can be construed as inspection, policing or supervision.

H. Effect of 337 Transactions on Competitors.

No proof concerning effect on competitors resulting from Richfield's relationship with the 337 dealers was offered by the government.

Exhibit M-8 [R. 449-53, 1560] sets forth the number of companies who have marketed in excess of one million taxable gallons of gasoline per year in Richfield's marketing area. Although there were 68 of such companies in 1950, no representative of any of such companies or of any other company selling gasoline was called by the government as a witness to testify as to the effect upon any of them of any of Richfield's marketing operations, practices or contracts.

The government offered no competitor witness who testified as to his inability to sell any petroleum products or any automotive accessories to any 337 dealer.[16]

6. DETAILED STATEMENT CONCERNING THE 3-C STATIONS.

A. Nature of the Written Contracts.

In the 3-C transaction Richfield has entered into three instruments with the independent dealer consisting of a lease from the dealer to Richfield [Ex. 4; R. 262-3, 567]; a sublease from Richfield to the dealer [Exs. 4-A and 4-D; R. 264, 267, 567]; and a sales contract [Exs. 4-B and 4-C; R. 265, 266, 567]. All three of these instruments were excuted as a part of one transaction. [R. 1641-2.] The printed forms were revised from time to time in the respects described in the Stipulation of Facts. [Ex. A; R. 401-2, 762.]

During the period from 1945 until August, 1948, the sales contract provided for purchase by the dealer of his "entire requirements" of gasoline, lubricating oil and grease. [Ex. 4-B; R. 264, 567.] The 3-C sales transaction was used by Richfield with those independent dealers whose business could only be obtained on the basis

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[16]Each of the 25 competitor witnesses presented by the government testified of his inability to sell or difficulties in selling products to the L. O. operators. The testimony of only three of the competitor witnesses related in any way to sales to dealers. Their testimony, which is discussed hereinafter, related only to 3-C dealers.

of Richfield's meeting competitive offers by making some investment in the station by way of loan of equipment or money, improvements to the dealer's station, etc. [R. 1619, 1643, 1682.]

Richfield reprinted the 3-C sales contract in August of 1948, and made the same similar to the 337 form of sales contract, *i. e.*, an agreement by the buyer to purchase specified quantities of gasoline, lubricating oil and grease and with the right of the buyer to purchase additional quantities up to a stated maximum. [Ex. 4-C; R. 266, 567.]

This change in the 3-C form of sales contract was made by Richfield on the advice of its legal department that the entire requirements provision was illegal, which advice was given following Judge Yankwich's decision in 1948, in the *Standard Oil Company* case. [R. 1643.]

It was stipulated between Richfield and the government:

> "At the time of such print in August of 1948 all copies of the forms of 3-C Sales Contract containing the 'entire requirements' provisions were destroyed and defendant immediately negotiated with all 3-C dealers to terminate the former 'entire requirements' form of Sales Contracts and to execute in lieu thereof the 3-C Operators' Sales Contract Form 783, printed August 1948. As of the date hereof there are in effect only four 3-C Sales Contracts containing the 'exclusive dealing' provisions." [Ex. A; R. 402, 762.]

The greatest number of 3-C contracts on an "entire requirements" basis which Richfield ever had was 182, which number existed as of the end of 1947. [Ex. 26-A, R. 327, 1540.]

After the specified quantity type of sales contract [Ex. 4-C; R. 266, 567] was substituted for the "entire requirements" form in August of 1948, the instructions to the salesmen concerning the maximum quantities which the 3-C dealer would be permitted to obligate himself to purchase were the same as those given with respect to the 337 type of sales contract, *i. e.,* instructions in August of 1948 that the designated quantity could not exceed 85% of the dealer's past known sales, which figure was reduced to 75% early in 1950. [R. 1643, 1707-8.]

B. Whether Richfield Entered Into Oral Contracts, Agreements or Understandings With the 3-C Dealers.

There was no evidence of any oral agreement between Richfield and any one or more of the 261 dealers of the 3-C type. Oral agreements were forbidden by express instructions. See discussion above in connection with 337 stations.

C. Buying Habits of the 3-C Dealers.

The discussion of the buying habits of the 337 dealers is equally applicable to the buying practices of the 3-C dealers subsequent to the change of the 3-C sales contract in August, 1948. [R. 1706-7.]

D. Termination of 3-C Sales Contracts.

There is no evidence of any instance of a termination or threat of termination by Richfield of the nature alleged in the complaint of any 3-C sales contract or lease.

E. Comparative Statistics Re the 3-C Dealer Stations.

As of December 31, 1948, Richfield had contracts with 251 dealers of the 3-C class whose stations constituted 0.7% of the total number of service stations in Richfield's marketing area. [Ex. M-4; R. 436, 1557.]

For the year 1950, the volume of gasoline sold to the 3-C dealer stations was 0.63% of the volume of gasoline sold by all companies to all service stations and was 0.4% of the taxable sales of motor fuel by all companies. [Ex. M-5; R. 437-40, 1559.]

For the year 1950, gasoline sold to the 3-C dealer stations constituted 0.34% of the total quantity of gasoline manufactured and available for sale in Richfield's marketing area. [Ex. Z; R. 517, 1768.]

F. Inspection, Supervision and Control.

Notwithstanding that the District Court found (Finding 29) that Richfield "inspects, polices and supervises the activities and sales" of all L.O. operators and all 337 and 3-C dealers, there is no evidence in the record of anything other than normal sales activities by Richfield's salesmen in their sales solicitation of the business of the 3-C dealers. Pages 126 to 131 of this Brief contain a statement of all testimony pertinent to this phase of the case. Such testimony does not disclose any acts which can be construed as inspection, policing or supervision. The only evidence of efforts by Richfield's

salesmen to have the 3-C dealers confine their activities to Richfield's petroleum products and approved automotive accessories related to times prior to the conversion of the 3-C sales contract form from an entire requirements basis to a specified quantity basis following the decision in the *Standard* case in 1948. [R. 1643.]

G. Effect of 3-C Transactions on Competitors.

The government presented four witnesses of the 3-C dealer type, Moore [R. 1012], Colmery [R. 1191], Strable [R. 1110] and Ogburn [R. 1354]. The only one of them who testified as to a restraint of any nature by Richfield on the products to be handled by him subsequent to the change of the 3-C contract from an "entire requirements" basis was Ogburn. Ogburn testified that he was asked by a commission agent to keep competitive oils hidden; he was not told that he could not handle competitive products. [R. 1357, 1360-1.]

Of the twenty-five competitor witnesses presented at the trial by the government, only three (Ellis, Turner and Cleveland) testified of efforts to sell products to 3-C dealers. Of these three, only Ellis testified to inability to sell his product to a 3-C dealer, Colmery, and this inability occurred at a time when Colmery was on an "entire requirements" form of 3-C contract which he refused to change until Richfield gave him a thirty-day termination privilege. [R. 220-4, 931, 934, 942-4, 1199-1200.]

No other proof concerning any effect on competitors resulting from Richfield's relationship with the 3-C dealers was offered by the government.

7. DISTRIBUTION OF TIRES, BATTERIES AND ACCESSORIES (TBA).

Approved TBA refers to those items of tires, batteries and automotive accessories selected by Richfield which it permits to be sold by service station dealers and operators on credit to those members of the motoring public holding Richfield credit cards. The collection of those credit sales is a risk assumed entirely by Richfield. [R. 663-4; Ex. Q; R. 236, 1641.] The greatest portion of approved TBA purchased by Richfield from the manufacturers is resold by it to TBA distributors appointed by it. In a few isolated instances, Richfield makes direct sales to particular service station dealers who buy in such large volume that they qualify for the same discount as the distributors. [Ex. 26-A; R. 373-5, 1540.] Other items of approved TBA are purchased by TBA distributors from the manufacturers and Richfield receives a commission thereon from the manufacturers. [R. 572-9.]

The TBA distributors sell the products to (a) L. O. operators, (b) independent dealers, both 337 and 3-C, and (c) other dealers not handling Richfield petroleum products. [Ex. 26-A, R. 356, 1540. See also R. 1171-2.]

There is a substantial difference between the L. O. stations and the dealer stations in so far as Richfield's

practices concerning approved TBA are concerned. Richfield has required that the operators of the L. O. stations handle a representative line of approved TBA items. The 337 and 3-C dealers are told that only the approved items may be sold on Richfield's credit cards. Richfield suggests to such dealers that they stock such items, "but if they do not elect to do so, why that ends the matter." [R. 1650.]

Although the District Court found that Richfield had made an oral agreement with each of the 337 and 3-C dealers relating to the purchase by him of his entire requirements of automotive accessories from or through Richfield [Findings 5, 20, 21, 26 and 33; R. 135-56], the record is barren of any evidence whatsoever of any oral agreement or understanding of such nature between Richfield and any of the 337 or 3-C dealers. Similarly, there is no evidence to support the other findings referring to automotive accessories, *i. e.*, that Richfield inspects, polices and supervises the activities of the 3-C and 337 dealers [Finding 29; R. 154]; that competitors were unable to sell the same to the dealers [Findings 45 and 46; R. 161-2]; and that the dealers were unable to purchase competitive accessories. [Finding 47; R. 162.]

Specifications of Assigned Errors Intended to Be Urged.

The errors assigned which relate to the L. O. stations are contained in Part I of the Assignment and comprise twelve separate charges of error. [R. 195-205.]

Under Point I(A) of the Argument, which asserts that the relationship between Richfield and the L. O. operators is such that the restrictions imposed by Richfield thereon are not cognizable under Section 1 of the Sherman Act or Section 3 of the Clayton Act, Richfield will urge (a) the errors assigned to certain of the District Court's conclusions of law (Assignments 1, 2, 4 and 7) [R. 195-7, 201]; (b) the errors assigned to certain of the District Court's findings of fact (Assignment 3) [R. 196]; and (c) the errors assigned to the failure of the District Court to make certain findings of undisputed facts which the District Court ignored (Assignments 5 and 6). [R. 197-201.]

Under Point I(B) of the Argument, which asserts that even if the restrictions imposed by Richfield on the L. O. operators are otherwise cognizable under such Acts, nevertheless there is no showing of unreasonableness under Section 1 of the Sherman Act or substantiality under Section 3 of the Clayton Act, Richfield will urge (a) the errors assigned to certain of the District Court's conclusions of law (Assignments 9, 10 and 11(a) and 11(b)) [R. 203-4]; and (b) the errors assigned to the failure of the District Court to make certain findings of undisputed material facts (Assignment 8). [R. 202-3.]

Under Point I(C) of the Argument, which asserts that even if the Supreme Court should affirm the determination by the District Court that restrictions upon the L.

O. operators violate either Section 1 of the Sherman Act or Section 3 of the Clayton Act, nevertheless certain of the injunctive portions of the decree are erroneous, Richfield will urge the errors assigned to the Judgment (Assignments 11(c), 11(d) and 12). [R. 204-5.]

The errors assigned which relate to the independent dealer stations (including both the 337 and 3-C stations) are contained in Part II of the Assignment and comprise six separate charges of error. [R. 205-213.]

Under Point II(A) of the Argument, which asserts that the contracts between Richfield and the 337 and 3-C dealers are not exclusive dealing or requirements contracts, Richfield will urge (a) the errors assigned to certain of the District Court's conclusions of law (Assignments 2 and 6) [R. 207-9, 212-3]; (b) the errors assigned to certain of the District Court's findings of fact (Assignment 1) [R. 205-7]; and (c) the errors assigned to the failure of the District Court to make certain findings of undisputed material facts (Assignments 3(a), 3(b), 3(c) and 3(d)). [R. 209-11.]

Under Point II(B) of the Argument, which asserts that even if Richfield's contracts with the 337 or 3-C dealers could conceivably constitute exclusive dealing or requirements contracts, nevertheless there is no showing of unreasonableness under Section 1 of the Sherman Act or substantiality under Section 3 of the Clayton Act, Richfield will urge (a) the errors assigned to certain of the District Court's conclusions of law (Assignments 4, 5, 6(b) and 6(c)) [R. 212-3]; and (b) the errors assigned to the failure of the District Court to make certain findings of undisputed material facts (Assignments 3(e) to 3(p), inclusive). [R. 211-2.]

SUMMARY OF ARGUMENT.

Introduction.

Since the issues concerning the L. O. stations differ so completely from those concerning the Dealer stations (both the 337 and 3-C), the Argument will be stated separately as to each of such categories.

It is well to picture each category of station in the mirror of the other for that will bring into sharp focus the significant differences in the two which compel the recognition and determination that while the dealers in the 337 and 3-C stations are independent merchants and legitimate customers of the various competing oil companies, the L. O. operators are not.

I.
The L. O. Stations.

A. The District Court erroneously concluded that restrictions imposed by Richfield upon the operators installed by it on a temporary basis in its own L. O. stations violate Section 1 of the Sherman Act and Section 3 of the Clayton Act notwithstanding a clear showing that, ***under the facts and circumstances here involved,*** the trade and custom of such stations is Richfield's trade, such stations as so operated are not a legitimate market for Richfield's competitors, and the L. O. operators are not independent businessmen as that concept is understood in anti-trust law.

Restrictions against the handling of competitive products imposed by an employer upon his employees are not cognizable under either of such Acts. Nor are similar restrictions imposed by a principal upon his agents, par-

ticularly those who perform their functions in places of business or instrumentalities of doing business furnished by the principal. The underlying reason for such results is that in the presence of either of such relationships of employment or agency, the business conducted by the employee or agent is that of the employer or principal and does not constitute a legitimate market for the products of the competitors of the employer or principal which could be unlawfully "foreclosed."

The purpose and objective of the anti-trust laws is to insure the freedom of competition and to prevent restrictions on access by competitors to the market. Restrictions imposed by a supplier upon persons who are not its customers but are a part of its own sales organization cannot injuriously affect competitors in their access to the market. Only by ignoring the relationship, "in terms of restraint of trade," between the supplier and his employee or agent and by considering the employee or agent to be an independent businessman and therefore a customer of and a legitimate market for competitors can the supplier's restrictions on such persons be of a nature cognizable under the Sherman or Clayton Acts. The recognition of such underlying reason and principle will, we respectfully suggest, lead unerringly to the conclusion that Richfield's relationship with the L. O. operators, while it is not one of salaried employment or agency within traditional common law definitions, nevertheless contains all the same attributes when viewed from the standpoint of economic reality and in the light of what is the relevant market.

The District Court's findings of fact ignore and accordingly treat as immaterial all of the uncontradicted evidence pertaining to the nature of the relationship be-

tween Richfield and the L. O. operators which demonstrates that such relationship is not primarily that of buyer and seller, supplier and customer or landlord and tenant; but that the operators are functionally an integral part of Richfield's own sales organization and are not independent businessmen (regardless of whether they be deemed to be independent contractors in other fields of law). Such relationship between Richfield and the L. O. operators must be determined from a consideration of all of the facts and circumstances here involved (as to which there is no dispute or conflict of evidence whatsoever) and not by any one isolated facet thereof. The District Court determined that the printed lease signed by the L. O. operator was decisive. Ignored were the many other terms and conditions of the arrangement, including Richfield's requirements concerning the various phases of the operation and maintenance of the station which the operator is instructed and required to adhere to as conditions to his continued occupancy of Richfield's station, and of which the operator is orally informed before he is installed.[17] Ignored was the manner of securing and selecting potential operators, including the investigation of their character, family and habits. Ignored was the fact of Richfield's furnishing to the operators, at substantially less than their fair rental value, the valuable, fully equipped service stations which are the instrumentalities of doing business. Ignored was the fact that before the operator enters the station, he knows that his occupancy is temporary and may be terminated on short notice. Ignored also was the reservation by Richfield of the right

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[17]See portion of Statement on pages 14 to 16 of this Brief.

of continuous inspection and supervision of the station and its operator to determine compliance with its requirements, which reservation negates the statement in the District Court's opinion that the operator has exclusive possession against all the world, including Richfield. [R. 79.]

Furthermore, such relationship must be determined in the proper framework of inquiry, *i. e.*, whether, ***within the meaning of the anti-trust laws,*** these operators are independent businessmen and whether the business of the L. O. stations is a legitimate market for Richfield's competitors. It serves no purpose to attempt to determine or define the relationship in a different framework of inquiry, as for example whether the operators are employees of Richfield or independent contractors for purposes of payroll or social security taxes, workmen's compensation insurance, withholding taxes, tort liability and the like. Likewise it is not decisive of the problem, as the District Court thought, that the L. O. operator signs a lease on the station assigned to him by Richfield. The relationship of landlord and tenant determined by the District Court to exist from the use of the printed form of lease with its twenty-four hour termination provision does not preclude a determination that for the purposes of the application of the anti-trust laws, the L. O. operator is not an independent businessman and that the business of the station is not a legitimate market for Richfield's competitors.

Standard Oil Company of California v. U. S., 337 U. S. 293; 93 L. Ed. 1371, relied upon by the District Court in its Opinion, differs materially from this case and is

not authority supporting the judgment under either the Sherman or Clayton Act. No issue was raised in that case that the lessees of Standard's stations were not independent; and the issues and problems here raised were not present, considered or discussed. Nor were the facts in the *Standard* case at all comparable to those here involved, as will be discussed in the Argument hereinafter.

The District Court, by its own analysis, placed its judgment finally on the narrow ground that the "form" of the transaction "chosen" by Richfield (the printed form of lease to the L. O. operators) compelled its decision.[18] The Judgment cannot be sustained on such ground since it ignores the same factors above discussed concerning the absence of a legitimate market and the problem of an independent businessman status. Injunctions in anti-trust cases, resulting as they do in important and far-reaching economic consequences, should not be issued on the frail ground that while in substance the

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[18]The Opinion states: "So Richfield is tied to the *form* they chose. And if it does not give them immunity from the admitted restraints they impose through it, they must bear the consequences of their voluntary act, regardless of any contrary intention they may have had in choosing it." (Emphasis supplied.) [R. 85.]

The Opinion states further: "Even if it be admitted that if the outlet were its 'exclusive agency', the limitation could be imposed as an incident of ownership, under the *form* it has chosen, Richfield cannot deny to the dealers the right to deal with other suppliers as to their products. . . ." (Emphasis supplied.) [R. 89.]

transaction is not an unlawful restraint of trade, nevertheless it is *in form.*[19]

The District Court's decision extends the operation of the Sherman and Clayton Acts into areas in which they traditionally have had no application, and makes illegal under those statutes activities incident to relationships far removed from that of buyer and seller or supplier and customer. Until the judgment in this action, no case had ever determined a violation of either of such Acts under facts comparable to those here presented; and there is substantial authority hereinafter discussed that there is no violation.

B. If it be determined on this appeal that the relationship between Richfield and the L. O. operators is such that the restraints are cognizable under the Sherman and Clayton Acts, nevertheless there are no facts found by the District Court upon which it could properly base its conclusion that the restrictions are unreasonable under the Sherman Act under the tests applicable to such determination, particularly that enunciated in *U. S. v. Columbia Steel Company,* 334 U. S. 495, 524; 92 L. Ed. 1533,

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[19]Note that the District Court, having decided that the vice in the transaction was its *form,* then proceeded to perpetuate such form by taking away Richfield's right contained in the lease to terminate the same at any time, with or without cause, on twenty-four hours' notice, and by enjoining Richfield from terminating any of the existing 1343 L. O. leases, excepting for breach of the written covenants contained therein. See paragraph VI of Judgment. [R. 168-9.]

1552; *i. e.*, whether the effect of the limitations on the L. O. operators has been to restrict unreasonably the opportunities of competitors to market their products. Nor are there facts found which would meet the test of substantiality for purposes of Section 3 of the Clayton Act under the doctrine of *Standard Oil Company of California v. U. S.*, 337 U. S. 293, 314; 93 L. Ed. 1371, 1386.

C. Finally, if it be determined on this appeal that Richfield's restrictions on the L. O. operators do violate either Section 1 of the Sherman Act or Section 3 of the Clayton Act, the judgment of the District Court must nevertheless be reversed because the injunctive provisions relating to the L. O. stations are erroneous and unduly onerous in three respects:

First, the judgment improperly enjoins Richfield from exercising, for any purpose, the 24-hour termination clause contained in the printed lease on the erroneous assumption that the twenty-four hour clause is itself illegal under the law of landlord and tenant.

Second, and more drastically, the judgment enjoins Richfield from terminating the lease of any L. O. operator, even on the 30-day notice basis permitted by the decree, excepting "only for a breach of any of the written covenants contained" therein. [See Judgment, par. VI; R. 168-9.] When it is observed that the lease contains no stated expiration date and therefore continues until terminated and that its written covenants are largely limited to obligations concerning maintenance, repair and rent (which

is fixed at a sum substantially less than the fair rental value of the station and facilities) and do not cover Richfield's many requirements upon the operator concerning the operation of the station (only one of which is exclusive dealing in Richfield products), it is apparent that the operation of the injunction could not be other than confiscatory. In effect, the judgment requires Richfield to maintain the L. O. stations for the operators thereof notwithstanding they sell no Richfield products and without right or power in Richfield to take over its own stations and facilities so long as the operator thereof maintains the station in repair and pays the relatively nominal rental.

Third, the District Court denied Richfield's motion [R. 192-3] to include in the decree a qualification concerning the operators' use of Richfield's pumps, tanks or other containers similar to that qualification contained in the decree formulated by the same District Judge in *United States v. Standard Oil Company of California*, 78 Fed. Supp. 850, the case which he deemed determinative of this litigation. The omission of such qualification serves to enjoin Richfield from engaging in certain important competitive marketing practices which Richfield's largest competitor, Standard Oil Company of California, is expressly permitted to engage in by the judgment in the *Standard* case.

All other issues of this case to one side, we respectfully suggest that the Supreme Court should not condone in a case of this nature an injunction so patently punitive.

II.

The Dealer Stations.

A. The written contracts with the 337 and 3-C dealers do not provide for exclusive dealing in any products.[20] The government recognized this and accordingly the complaint charged (1) that Richfield had made supplemental *oral* contracts, agreements and understandings with *each* of the 337 and 3-C dealers by which they agreed to handle only Richfield's petroleum products and automotive accessories [Compl. pars. 17-19; R. 6-7]; and (2) that Richfield had required such dealers to adhere to such oral agreements and understandings by certain alleged coercive methods: (a) by threats of cancellation of the written sales contracts and leases[21] unless the alleged oral agreements were made and adhered to; (b) by inspection, policing and supervision of the activities and sales of the 337 and 3-C dealers; and (c) by actual cancellation "in in-

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[20]The written contracts with each of the 337 dealers and each of the 3-C dealers (excepting only those four 3-C sales contracts entered into prior to August of 1948 and unmodified at the time of trial) provided for the purchase, not of the dealer's entire requirements, but of a *specified quantity* of petroleum products. [Ex. A; R. 401-2, 762.] The quantities set forth in the contracts were substantially less than the dealers' anticipated purchases based on their past experience. [Ex. Y; R. 516, 1766.]

[21]The lease used in a 3-C transaction is entirely different from the lease used with the L. O. operator. [See Exs. 4-A and 4-D relating to the 3-C stations, R. 264, 267, 567; and Exs. 1-B and 1-G relating to the L. O. stations, R. 243-4, 251-2, 567.] In the 3-C transaction, the 3-C dealer is Richfield's lessor and sublessee. [Ex. A; R. 401, 762.]

stances too numerous to be herein mentioned" of the written lease or sales agreement of a dealer who refused to conform to the alleged oral agreements. [Compl. par. 20; R. 7-8.]

While the District Court made findings in favor of the government on each of such allegations, such findings are clearly erroneous under Rule 52(a) F. R. C. P.[22] The government's proof in support of its charges was minuscule in nature and limited to petty incidents both sporadic and remote in relation to the time of trial.

The government did not show any oral contract, agreement or understanding of exclusive dealing with any of the existing 337 or 3-C dealers; and the government showed only one instance, which occurred in 1941, which could possibly be construed as an oral understanding of exclusive dealing with any former 337 or 3-C dealer. Notwithstanding that there were 1361 dealers holding 337 sales contracts with Richfield at the time of trial and many others who had formerly been 337 dealers, the government called as witnesses only two such dealers.[23] Of the 261 dealers holding 3-C contracts with Richfield at the time of trial, the government called three as witnesses and also called one man, Ogborn, who operated

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[22]The particular findings so challenged are described in Assignment of Error II (1) [R. 205-7].

[23]One of these, McRae, had not been a dealer subsequent to 1946 [R. 1224]. The other, Moore, the current 337 dealer, did not testify to any oral contract, agreement or understanding [R. 1012-36].

a 3-C station under some arrangement between him and the 3-C dealer. None of these witnesses testified to any oral contract, agreement or understanding as alleged.

The government's proof as to the alleged coercive tactics was similarly petty, trivial and unsubstantial. The testimony offered by the government, which fell far short of proof of acts which could be considered coercive, related to incidents occurring not more recently than five years prior to the trial. Not by the grossest exaggeration could the government's proof support an inference of a pattern of coercive tactics known to, approved or condoned by Richfield's management.

The District Court's Opinion held that the contracts are requirements contracts.[24]

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[24]The Opinion states: "And, when confronted by a series of instruments, the sole object of which is to tie these stations to contracts which, in effect, are *requirement* contracts, although not so denominated, the testimony of the men in the field who actually were told that they *could not* trade freely with outsiders fits into the scheme which the sales contracts coupled with the leases, and the sales contracts coupled with the painting agreements, evidently was intended to set up." (Emphasis by Court.) [R. 93.]

Wholly without reason or authority is the rule of law so suggested by the District Court, to wit, that a sales contract providing for a specified quantity substantially less than the purchaser's anticipated requirements is an illegal "exclusive dealing contract" when used in connection with (a) a collateral agreement under which the purchaser, who has received without charge the painting of his place of business, agrees to repay to the seller the cost of such painting in the event the purchaser fails to buy the specified quantity, or (b) a lease and sublease under which the seller has the right to retain the lease and to terminate the sublease and the sales contract in the event that the sublessee-purchaser fails to buy the specified quantity.

B. If it be determined on this appeal that Richfield's arrangements with the 337 dealers or with the 3-C dealers could be deemed to be exclusive dealing or requirements contracts, nevertheless, there are no facts found by the District Court upon which it could properly base its conclusion that the arrangements with either class of dealers are unreasonable under the Sherman Act under the tests applicable to such determination, nor are there facts found upon which the District Court could properly determine substantiality for purposes of Section 3 of the Clayton Act.

ARGUMENT.

I.

THE L. O. STATIONS.

A. The Nature of Richfield's Relationship With the L. O. Operators Is Such That the Trade and Custom of the L. O. Stations as Operated by the L. O. Operators Is Richfield's Trade and Custom and Is Not the Subject Matter of Competition Between Richfield and Its Competitors and Is Not a Legitimate Market for Richfield's Competitors. Neither Section 1 of the Sherman Act nor Section 3 of the Clayton Act Apply to Richfield's Restrictions on the L. O. Operators Any More Than They Apply to Restrictions Imposed by a Supplier on Its Own Employees or Agents Operating in the Supplier's Own Places of Business.

We respectfully submit that under the facts and circumstances of this case, it is demonstrable that there exists an intimate relationship between Richfield and each L. O. operator of such nature that the L. O. station is itself merely an outlet lawfully controlled by Richfield for the sale of its products to the market, *i. e.*, the buying public, and that neither the L. O. station nor its operator is a market for Richfield's competitors. We submit further that it is demonstrable that the relationship is analogous to the relationship of employment or agency for the purposes of and within the scope and meaning of the Sherman and Clayton Acts; and that the same underlying reason which permits an employer or principal lawfully and without violation of either of such Acts to restrict the employee or agent to the handling of the supplier's products applies equally to Richfield's relationship with the L. O. operators.

The L. O. stations are not operated by independent merchants regularly engaged in their own places of business in the purchase of petroleum products on a competitive and arm's length basis from suppliers of their own selection. Richfield has acquired and constructed the L. O. stations to serve a valid business purpose, to-wit, as outlets for the sale of Richfield's petroleum products; and Richfield has from time to time installed therein operators selected and trained by Richfield to operate the stations in the manner prescribed by it. Richfield has reserved the right to and does exercise constant supervision and control over the operators in the day to day operation of the stations. The operators have a limited right to occupy the premises under a tenancy which, in order to implement Richfield's right of control and supervision, is designedly on a temporary basis terminable on 24 hours' notice. These stations are valuable instrumentalities of doing business furnished by Richfield to the operators at substantially less than their fair rental value.

The relationship between Richfield and the L. O. operators is not primarily that of supplier and customer or seller and buyer. The operators are functionally an integral part of Richfield's sales organization. If Richfield elects, by closing one of its L. O. stations and discharging the operator thereof, not to supply it with petroleum products, no competitor of Richfield will sell petroleum products to such service station since there is no one there other than Richfield to whom such sale can be made.[25]

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[25]Compare this attribute of the L. O. stations with the stations of the 337 and 3-C dealers who are truly independent businessmen since they own or control their places of doing business and deal on an arm's length basis of buyer and seller with suppliers of their own selection. If Richfield does not sell petroleum products to the 337 and 3-C stations, other suppliers of petroleum products will do so.

Richfield cannot be compelled under the anti-trust laws to buy the petroleum products of other suppliers and thus be required to compete against itself. Under these circumstances Richfield's requirement that the operators of Richfield's L. O. stations handle only Richfield's petroleum products cannot either factually or in contemplation of law affect competition, substantially or otherwise; and such requirement cannot violate either Section 1 of the Sherman Act or Section 3 of the Clayton Act.

We respectfully submit that a recognition of the underlying reason for the exclusion, from application of the anti-trust laws, of restrictions imposed upon employees and agents, as hereinafter discussed, will lead to the determination that within the same framework of inquiry, *i. e.*, "in terms of restraint of trade," Richfield's relationship with the L. O. operators contains all the same attributes as those of employment or agency.

(1) THE UNDERLYING REASON FOR THE EXCLUSION OF EMPLOYMENT, AGENCY AND OTHER INTIMATE RELATIONSHIPS FROM PROHIBITIONS OF SECTION 1 OF THE SHERMAN ACT AND SECTION 3 OF THE CLAYTON ACT IS THAT IN THE PRESENCE OF SUCH RELATIONSHIPS, THERE IS NO INDEPENDENT BUSINESSMAN STATUS AND THEREFORE NO LEGITIMATE MARKET OR SUBJECT MATTER OF COMPETITION.

United States v. Standard Oil Co. of California, 78 Fed. Supp. 850 (D. C. Cal. 1948)[26] involved both (a)

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[26]Affirmed in 337 U. S. 293; 93 L. Ed. 1371 (1949).

The appeal concerned only the 5937 independent stations and not the 1063 employee operated stations, although the Supreme Court referred to the latter, in passing, as Standard's "own service stations." (*Id.* at 295; *id.* at 1376.)

1063 so-called "employee operated stations" managed by Standard Stations, Incorporated, and (b) 5937 independent service stations operated by dealers who were obligated by contracts to purchase from Standard their entire requirements of petroleum products and automotive accessories. With respect to the first group of stations, the District Court said, on page 854:

> "* * *, no further reference need to be made to stations so operated, which have been referred to in the evidence as 'employee operated stations.' The Government does not question (indeed it could not) the right of the Standard Oil Company of California to operate its own stations and sell therein any product it manufactures or distributes."

Why "could not" the government question Standard's right to require exclusive dealing in Standard's products in its own stations operated by it? The District Court did not state the reason; nor have we been able to find a clear and definitive statement of the reason for a conclusion so obvious and well recognized. *Nevertheless, we respectfully submit that the true reason is that a station so owned and operated is merely an outlet to the market and is not a part of the market for petroleum products for which the various suppliers are competitors or from which they can be unlawfully foreclosed.* It could not be an unreasonable restraint of trade for Standard to restrict a salaried employee in one of Standard's own stations from handling therein the gasoline of one of Standard's competitors for the personal benefit of such employee and competitor and to the detriment of the volume of Standard's gasoline offered for sale in such station.

That the purpose of the anti-trust laws is to protect competition has been stated many times. In *Apex Hosiery Co. v. Leader,* 310 U. S. 469, 500; 84 L. Ed. 1311, 1327 (1940), the Court said:

> *"Labor cases apart,* which will presently be discussed, this Court has not departed from the conception of the Sherman Act as affording a remedy, public and private, for the public wrongs which flow from *restraints of trade in the common law sense of restriction or suppression of commercial competition."* (Emphasis supplied.)

See also:

> *Standard Oil Company v. Federal Trade Commission,* 340 U. S. 231, 248, 249; 95 L. Ed. 239, 250, 251 (1951);
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> *William Goldman Theatres, Inc. v. Loew's, Inc.,* 150 F. 2d 738, 743 (C. C. A. 3, 1945).

The trade and custom for which there is *competition* between competitors is that of *customers.* Independent merchants operating their own service stations (as for example the 337 and 3-C dealers) are the *customers* for the petroleum products of various competing suppliers; and a restraint imposed by a supplier upon such customers could substantially affect competition. But the salaried employees in one of Standard's own stations are not the *customers* of Standard's competitors any more than they are the customers of Standard itself. Such employees are merely Standard's own representatives in its own stations. They are not independent businessmen. The trade and custom of such stations is Standard's trade and custom. Standard is not a customer of its competitors; Standard is their competitor. Accordingly, *U. S. v. Stan-*

dard Oil Company of California (*supra*) recognized that Standard's limitation upon its employees to sell only Standard's products in its own stations could not be a restraint of competition or of trade.

Differently stated, it is recognized that the trade and custom of a trade outlet owned or leased by a supplier of products and operated for that supplier by his own employees is the supplier's own trade and custom and the *outlet as so operated is not the subject matter of legitimate competition between that supplier and his competitors.* On the other hand, the trade and custom of independent merchants established in business and dealing at arm's length with various suppliers of products who compete with one another for such business *is* the subject matter of competition.

Few decided cases have dealt with the problem of what is and what is not the subject matter of competition. The following cases are illustrative of the two extremes:

Porto Rico Ry. Light & Power Co. v. Colom, 106 F. 2d 345 (C. C. A. 1, 1939); cert. den. 308 U. S. 617; 84 L. Ed. 516 (1939)

Federal Trade Commission v. Curtis Publishing Co., 260 U. S. 568; 67 L. Ed. 408 (1923)

Carter Carburetor Corporation v. Federal Trade Commission, 112 F. 2d 722 (C. C. A. 8, 1940)

United States v. Masonite Corporation, 316 U. S. 265; 86 L. Ed. 1461 (1942).

In *Porto Rico Ry. Light & Power Co. v. Colom,* 106 F. 2d 345 (C. C. A. 1, 1939); cert. den. 308 U. S. 617; 84 L. Ed. 516 (1939), the plaintiff power company sued to enjoin the insular government from making and dis-

tributing power for municipal purposes within plaintiff's franchise territory. Plaintiff relied on an agreement with the insular government wherein the latter agreed not directly or indirectly "to compete" with plaintiff within its franchise territory. In affirming a judgment denying the injunction, the Circuit Court of Appeals said (106 F. 2d 345, 353):

> "The appellant further insists that the introduction of electric power into the appellant's territory, as proposed and threatened, would constitute a breach of the non-competing agreement. * * * *Furnishing services to oneself does not constitute competition, as that term is generally accepted,* and furnishing power as contemplated for the insular government and the municipal purposes, is in effect a case of the insular government supplying itself." (Emphasis ours.)

Federal Trade Commission v. Curtis Publishing Co., 260 U. S. 568; 67 L. Ed. 408 (1923) involved a cease and desist order by the Federal Trade Commission under Section 5 of the Federal Trade Commission Act and Section 3 of the Clayton Act. The Commission's order found that Curtis had made contracts with 1,535 so-called "wholesale agents," by which the latter agreed to train, instruct and supervise an adequate force of boys for distributing Curtis' publications, and agreed to supply the demand of such boys and other dealers at specified prices, and agreed not to act as agent for or sell or supply to others at wholesale periodicals other than those published by Curtis. The Commission's cease and desist order applied only to 447 of the wholesale dealers who the Com-

mission found had, prior to entering into such contracts with Curtis, *been regularly engaged in the business of wholesale dealers in newspapers or magazines and as such were engaged in the sale or distribution of periodicals of other publishers.* The Supreme Court held that the contracts involved did not violate the Federal Trade Commission Act or the Clayton Act because of the intimate relationship between Curtis and the wholesale agents and the boys (the significance of which intimate relationship is discussed hereinafter).

The case is significant here in its disclosure that no attack was made upon Curtis' contracts with the balance of the 1,535 wholesale dealers who evidently were not considered to be the subject matter of competition since they had not been engaged in selling the periodicals of other publishers prior to their contracts with Curtis. The Supreme Court said (260 U. S. 568, 581; 67 L. Ed. 408, 413):

> "The Commission's report suggests no objection as to 1,088 of these representatives, who, prior to their contracts, had not been engaged in selling and distributing newspapers or periodicals for other publishers."

In *Carter Carburetor Corporation v. Federal Trade Commission,* 112 F. 2d 722 (C. C. A. 8, 1940), the Circuit Court of Appeals, in distinguishing the publishing company cases, made apparent that the trade and custom of independent merchants regularly established in business for their own account is the subject matter of competition, whereas the trade and commerce of a supplier's own

organization of salesmen is not so considered. The Court said (112 F. 2d 722, 736):

> "Petitioner has laid stress and reliance upon Curtis Publishing Co. v. Federal Trade Commission, 3 Cir., 270 F. 881, affirmed, Federal Trade Commission v. Curtis Publishing Co., 260 U. S. 568, 43 S. Ct. 210, 67 L. Ed. 408; and Pictorial Review Co. v. Curtis Publishing Co., D. C., 255 F. 206, but we find those cases inapplicable here and to be distinguished on the facts. It was there recognized that where a producer has built up his business by creating an organization of salesmen devoting their time exclusively to the distribution of his products, he may lawfully maintain the integrity of the organization as an exclusive selling agency. But in this case, the thousands of service stations involved are *established independent outlets* where the public has been accustomed to go for service on all makes of carburetors and other automobile equipment. Their specialization in ignition service ante-dated the specializing in carburetors. They are not and have never constituted an exclusive selling agency for Carter products. *The action of the petitioner was taken to coerce and compel them to change their character* and to narrow and limit their customary service to the public and to lessen, restrain and ultimately prevent the legitimate commerce of competitors whose goods were and had been moving in interstate commerce through this important outlet." (Emphasis supplied.)

In *United States v. Masonite Corporation,* 316 U. S. 265; 86 L. Ed. 1461 (1942), a similar distinction was made between a supplier's own business which is not the subject matter of competition and the sales organization of an independent business which is the subject matter of

competition. The Court said (316 U. S. 265, 279, 86 L. Ed. 1461, 1476):

> "Doubtless there is a proper area for utilization by a patentee of a *del credere* agent in the sale or disposition of the patented article. A patentee who employs such an agent to distribute his product certainly is not enlarging the scope of his patent privilege *if it may fairly be said that that distribution is part of the patentee's own business and operates only to secure to him the reward for his invention which Congress has provided. But where he utilizes the sales organization of another business—a business with which he has no intimate relationship*—quite different problems are posed since such a regimentation of a marketing system is peculiarly susceptible to the restraints of trade which the Sherman Act condemns. And when it is clear, as it is in this case, that the marketing systems utilized by means of the *del credere* agency agreements are those of competitors of the patentee and that the purpose is to fix prices at which the competitors may market the product, the device is without more an enlargement of the limited patent privilege and a violation of the Sherman Act." (Emphasis supplied.)

The doctrine above discussed has been extended and applied in various analogous situations where a restraint has been held lawful when imposed by the supplier upon persons who, while not employees in the strict sense of the term, nevertheless occupy such a *close and intimate relationship* to the supplier that in economic reality they are not independent businessmen and do not constitute a legitimate market or the subject matter of competition with competitors of the supplier. The situations will be discussed under each Act separately.

The situations to which the doctrine has thus been extended in cases involving restraints of trade under Section 1 of the Sherman Act and unfair methods of competition under Section 5 of the Federal Trade Commission Act are:

(a) Where There Is a Relationship of Principal and Agent Between the Supplier and the Person on Whom the Restriction Has Been Imposed.

United States v. General Electric Co., 272 U. S. 476; 71 L. Ed. 362 (1926);

United States v. General Electric Co., 82 Fed. Supp. 753 (D. C., N. J., 1949);

United States v. Masonite Corporation, 316 U. S. 265, 279; 86 L. Ed. 1461, 1476 (1942).[27]

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[27]Note that in the *General Electric* case, the agents as to whom the restraints were held valid were some 21,000 persons whom the Supreme Court recognized to be "those who ordinarily and usually would be merchants buying from the manufacturer and selling to the public." (272 U. S. 476, 483, 484; 71 L. Ed. 362, 368.) The Supreme Court also said (*id.* at 484, 485; *id.* at 368):

> "The circumstance that the agents were in their regular business wholesale or retail merchants and under a prior arrangement had bought the lamps and sold them as their owners did not prevent a change in their relation to the company."

Nevertheless, it would appear from the *Masonite Corporation* case that a supplier may not, as a *device* to avoid the operation and effect of the Sherman Act, designate *as agents*, independent merchants regularly established in businesses of their own with which businesses the supplier has no "intimate relationship."

(b) Where, Although There Is Not a Relationship of Principal and Agent Within Strict Common Law Concepts, Nevertheless There Is an Intimate Relationship of Trust and Fidelity Resulting From a Number of Factors as a Result of Which the Parties to the Restriction Do Not Occupy the Relationship of Mere Seller and Buyer Dealing at Arm's Length With One Another.

In *Appalachian Coals, Inc. v. United States,* 288 U. S. 344, 360, 361; 77 L. Ed. 825, 830 (1933), the Supreme Court said:

> "In applying this test, a close and objective scrutiny of particular conditions and purposes is necessary in each case. Realities must dominate the judgment. The mere fact that the parties to an agreement eliminate competition between themselves is not enough to condemn it. 'The legality of an agreement or regulation cannot be determined by so simple a test, as whether it restrains competition. Every agreement concerning trade, every regulation of trade, restrains.' Board of Trade v. United States, 246 U. S. 231, 62 L. Ed. 683, 38 S. Ct. 242, Ann. Cas. 1918D, 1207 *supra. The familiar illustrations of partnerships, and enterprises fairly integrated in the interest of the promotion of commerce, at once occur.* The question of the application of the statute is one of intent and effect, and is not to be determined by arbitrary assumptions." (Emphasis supplied.)

In *United States v. Addyston Pipe & Steel Co.,* 85 Fed. 271, 280-282 (C. C. A. 6, 1898), the Court makes the following statements concerning exceptions to the common law rule against restraints of trade:

> ". . . After a time it became apparent to the people and the courts that it was in the interest of trade

that certain covenants in restraint of trade should be enforced. . . . Again, when two men became partners in a business, although their union might reduce competition, this effect was only an incident to the main purpose of a union of their capital, enterprise, and energy to carry on a successful business, and one useful to the community. Restrictions in the articles of partnership upon the business activity of the members, with a view of securing their entire effort in the common enterprise, were, of course, only ancillary to the main end of the union, and were to be encouraged. Again, when one in business sold property with which the buyer might set up a rival business, it was certainly reasonable that the seller should be able to restrain the buyer from doing him an injury which, but for the sale, the buyer would be unable to inflict. *This was not reducing competition, but was only securing the seller against an increase of competition of his own creating.* Such an exception was necessary to promote the free purchase and sale of property. Again, it was of importance that business men and professional men should have every motive to employ the ablest assistants, and to instruct them thoroughly; but they would naturally be reluctant to do so unless such assistants were able to bind themselves not to set up a rival business in the vicinity after learning the details and secrets of the business of their employers." (Emphasis supplied.)

In *Federal Trade Commission v. Curtis Publishing Co.*, 260 U. S. 568; 67 L. Ed. 408 (1923), it was held that exclusive dealing practices between Curtis and a number of wholesale agents and school boys selling Curtis' publications did not violate either Section 5 of the Federal Trade Commission Act or Section 3 of the Clayton Act in view of the intimate relationship between

them. In its discussion concerning Section 5 of the Federal Trade Commission Act forbidding "unfair methods of competition" (15 U. S. C. A. Sec. 45), the Supreme Court said (260 U. S. 568, 582; 67 L. Ed. 408, 414):

> "The mere selection of competent, successful, and exclusive representatives in the orderly course of development can give no just cause for complaint, and, when standing alone, certainly affords no ground for condemnation under the statute."

The nature of the relationship between Curtis and the wholesale agents and the school boys is discussed in detail in the decision of the Circuit Court of Appeals in the same case (270 Fed. 881 (C. C. A. 3, 1921)), in which emphasis was placed upon the following factors: the manner of selection and recruiting of the school boys and agents (pp. 887 and 889), the training program (p. 890), the promotion of the boys (pp. 890 and 891), Curtis' expenses and investment in the program (p. 891), and the arrangement for return of unsold publications (p. 907). In commenting on this relationship, the Circuit Court of Appeals said:

> ". . . The personal character of this work of the local distributing agents and the co-operation of the company's traveling agents, in the organization of this league of the boys, and the time, patience, and expenses expended in its formation, are fully set forth on the record, and show, beyond all question, that this widespread, novel, and effective selling organization of distributing agents and boy salesmen *is a part of the complainant's business*, fairly

and laboriously built up by it, and leaves no doubt that its morale, efficiency, and good will was a business asset, and in the distribution of magazines of great value, and its continuance and its success was, in the main, bottomed on the undivided loyalty of the local distributing agents and on their continuing to remain distributing agents of the Curtis Company alone." (Pp. 891 and 892.)

". . . The proofs show that the Curtis Company expended in the maintenance of districts agents and boys in the four years, 1914 to 1917, both inclusive, over $5,500,000, and they abundantly satisfy us that this *method of distribution* is an entity made up of the *joint activity and personal co-operation of district distributing agents and boy distributors and their relationship to the Curtis Company*, each one of the three being dependent upon the other two for the proper co-operating and interrelated distribution of the respondent's publications and promptly furnishing the same to the reading public, and that this plan originated with, and was built up by, the Curtis Company through years of patient effort and at great expense, and that it forms the basic, practical method of distributing and marketing the Curtis Company's publications and is a business asset of great value, and that the vital and basic element in this business is the undivided loyalty and personal interest and influence of the distributing agents." (Pp. 892 and 893.)

". . . It has therefore seemed to us that the unique character of the subject-matter of this contract, the object the publisher had in view, and the phraseology, conditions, and obligations of this contract, unite to make the contract one of consignment to a distributing agency, *who was furthering the*

business of his principals, and not one of a buyer, who thereby acquires title for his own individual purposes." (P. 908.)

". . . That company legitimately, and in course of fair business dealing, built up and recruits by its distributing district agents a selling agency of schoolboys, the whole efficiency of which consisted in undivided loyalty and single-hearted service, primarily of the district agents, and secondarily of the boys, to that company. The whole situation was unique. *This was not a case of commerce in the ordinary channels of salesmanship.* . . . There can be no doubt under the proofs that the Curtis Company, in building up this boy-selling organization through the distributing district agents, *was not throttling or indeed dealing with the ordinary channels of commerce*, but was enlarging the sphere of commerce by enlisting in its service the selling power of schoolboys, *who, but for this organization, would not only not have taken part in present commerce,* but who would have missed the commercial training the Curtis Company alone gave them for future commerce, and the Pictorial Company and the Crowell Company had no hand in giving them, and indeed it seems to us that these companies will, if this injunction here complained of was enforced, succeed in really throttling commerce, by disrupting and destroying an efficient agency which is extending commerce." (P. 912). (Emphasis supplied.)

See also:

Pictorial Review Co. v. Curtis Publishing Co., 255 Fed. 206 (D. C. N. Y., 1917);

Journal of Commerce Pub. Co. v. Tribune Co., 286 Fed. 111 (C. C. A. 7, 1922).

CLAYTON ACT, SECTION 3.

The same doctrine above discussed in relation to Section 1 of the Sherman Act is equally applicable to Section 3 of the Clayton Act.

It is to be noted particularly that Section 3 is not applicable to a situation unless it is shown that the goods or other commodities excluded by the "condition, agreement, or understanding" are those of a "competitor or competitors" of the seller. This necessarily assumes that "competitor or competitors" are such as to the trade and custom of the purchaser of the commodity; that is to say, that the trade and custom of the purchaser is, or but for the "condition, agreement, or understanding" would be, *the subject matter of competition* between the seller and his "competitor or competitors." Furthermore, the trade and custom of the purchaser must be shown to be the subject matter of competition between the seller and his competitors; since there could not otherwise be any substantial lessening of competition within the meaning of Section 3.

Since the language of Section 3 is limited to a "lease, sale, or contract for sale," the Section has been held to be inapplicable to a relationship of agency.

In *Federal Trade Commission v. Curtis Publishing Co.*, 260 U. S. 568, 581; 67 L. Ed. 408, 413 (1923), the Court said:

> "Judged by its terms, we think this contract is one of agency, not of sale upon condition, and the record reveals no surrounding circumstances sufficient to give it a different character. This, of course, disposes of the charges under the Clayton Act."

In *Standard Fashion Co. v. Magrane-Houston*, 258 U. S. 346; 66 L. Ed. 653 (1922), contention was made that Section 3 of the Clayton Act was inapplicable since the contract involved was one of agency and not of sale. It was held by the Court, however, that under the circumstances there involved the contract was not one of agency but that "a sale was in fact intended and made."

We respectfully submit that the case last above cited cannot be interpreted, however, to mean that a true relationship of principal and agent within a strict common law definition of the term must be present to exclude the transaction from Section 3 of the Clayton Act. The so-called agents involved in *Standard Fashion Co. v. Magrane-Houston Co. (supra)*, appear to have been *independent dealers* established in business and their business was the subject matter of competition between the *Standard Fashion Co.* and its competitors. In the *Standard Fashion* case, the Supreme Court said (258 U. S. 346, 357; 66 L. Ed. 653, 658):

> "These courts put special stress upon the fact found that, of 52,000 so-called pattern agencies in the entire country, the petitioner, or its holding company, controlling it and two other pattern companies, approximately controlled two-fifths of such agencies. As the circuit court of appeals, summarizing the matter, pertinently observed:
>
> " 'The restriction of each merchant to one pattern manufacturer must in hundreds, perhaps in thousands, of small communities, amount to giving such single pattern manufacturer a monopoly of the business in such community. Even in the larger cities, to limit to a single pattern maker the pattern business of dealers most resorted to by customers whose

purchases tend to give fashions their vogue may tend to facilitate further combinations; so that the plaintiff, or some other aggressive concern, instead of controlling two-fifths, will shortly have almost, if not quite, all the pattern business.' "

In other words, the *Standard Fashion* case imposed the same limitation on the agency doctrine for purposes of Section 3 of the Clayton Act as *United States v. Masonite Corporation,* 316 U. S. 265; 86 L. Ed. 1461 (1942) placed on such doctrine for purposes of Section 1 of the Sherman Act (see footnote 27 hereinabove and also the quotation from the *Masonite Corporation* case on page 61 of this Brief). It would appear that a supplier will not be permitted, as a device to avoid the impact of either of such sections, to designate as agents those independent merchants normally and regularly engaged in business and in buying from the competitors of such supplier.

On the other hand, it is apparent that the agency relationship which is not cognizable under Section 3 of the Clayton Act *is not limited to those situations where a principal and agent relationship in the strict common law sense is present.*

In *Curtis Publishing Co. v. Federal Trade Commission,* 270 Fed. 881 (C. C. A. 3, 1921), affirmed in 260 U. S. 568; 67 L. Ed. 408 (1923), the relationship between Curtis and its wholesale agents and groups of school boys, while not a relationship of principal and agent in the strict common law sense, was nevertheless held to be an agency for purposes of Section 3 of the Clayton Act.

Similarly, in *Pictorial Review Co. v. Curtis Publishing Co.,* 255 Fed. 206 (D. C. N. Y. 1917), the Court held

that although there was a sale of magazines by Curtis to the wholesale dealers, the agreement in substance established an agency relationship and that, therefore, there was no violation of the Clayton Act. In this connection, the Court said (255 Fed. 206, 208-210):

> "I can have no doubt that the district agents or wholesalers who receive from the defendant the Ladies' Home Journal and put it on the market are purchasers of the magazine. There can be no question, in view of the payment in advance and the other elements of the transaction, that title to the magazines which these wholesale agents receive passes to them. *They are not mere factors or agents. Nevertheless they are clearly much more than purchasers.* The prime characteristic of the Curtis system is to market the defendant's magazines through newsboys, and to develop an efficient body of these boys by a proper selection in the first place, by keeping them in good surroundings, by appealing to their ambition through conferring ranks and prizes in case of success, and by obtaining good business positions for those who have retired. There is no doubt that by means of this system the sale of the defendant's magazines is greatly increased.
>
> "If nothing but a sale were involved, I might support complainant's contention that defendant has violated the Clayton Act by preventing its wholesale dealers from selling the Pictorial Review through subdealers and boys; but what complainant evidently desires is, not merely to sell to these wholesalers, which it can do already in cases where the wholesalers have a retail trade, and to the extent of that retail trade, but to avail itself of the organization of the Curtis boys, built up by the ingenuity, labor, and capital of the defendant. The defendant,

in insisting upon maintaining the integrity of its system, is not in my opinion guilty of unfair trade. On the contrary, the complainant, in attempting to avail itself of this system, is engaging in unfair trade. That it cannot build up a system of its own, if it desires to do so and will go to the trouble and expense, I do not believe. It is attempting here to secure a preliminary injunction to prevent the defendant from contracting with the latter's district agents not to market the Pictorial Review through boys and dealers. To grant such an injunction would break up what I think is a perfectly legitimate system for the promotion of sales of the defendant's magazines, and would enable the complainant, without expense, to employ the organization built up and fostered by the defendant.

". . . *The principal reason, doubtless, for selling the magazines to the district agents, rather than making consignments, with consequent financial risks, is one of safety and simplicity, and is not sufficient, in my opinion, to subject the relations of the parties in all respects to those of mere vendor and vendee.*

". . . *Looking behind the form of the contract which the defendant makes with its agents to the inherent features of the transaction, I think it may be said that the selling arrangement more nearly resembles an agency conducted by district agents in co-operation with the Curtis boys than it does an outright sale to the district agents and nothing more.* . . ." (Emphasis supplied.)

See also:

Journal of Commerce Pub. Co. v. Tribune Co., 286 Fed. 111 (C. C. A. 7, 1922);

Staroske v. Pulitzer Pub. Co., 235 Mo. 67, 138 S. W. 36 (1911).

We believe that the following language of the Supreme Court in the *Masonite Corporation* case is particularly appropriate, notwithstanding it deals with the Sherman Act:

> "So far as the Sherman Act is concerned the result must turn not on the skill with which counsel has manipulated the concepts of 'sale' and 'agency' but on the significance of the business practices *in terms of restraint of trade.*" (Emphasis supplied.) (316 U. S. 265, 280; 86 L. Ed. 1461, 1476.)

(2) WITHIN THE FRAMEWORK OF INQUIRY OF WHETHER OR NOT THE BUSINESS OF THE L. O. STATIONS IS A LEGITIMATE MARKET FOR ANTI-TRUST PURPOSES, THE RELATIONSHIP BETWEEN RICHFIELD AND THE L. O. OPERATORS CONTAINS ALL THE SAME ATTRIBUTES AS RELATIONSHIPS OF AGENCY OR EMPLOYMENT.

If the L. O. operators were agents or employees within the strict common law definitions (and Richfield, of course, has not contended that they are) there would be no problem here presented under either Section 1 of the Sherman Act or Section 3 of the Clayton Act. But the fact that they are not such agents or employees is not determinative of the issue in this case. Similarly, the facts found by the District Court that Richfield does not pay them wages or regard them as employees for purposes of workmen's compensation insurance or social security taxes [Finding 11, R. 142] and the facts enumerated in Finding 10 [R. 141-2] showing that the operators bear some of the expenses relating to the operation of the stations are not determinative of the issue in this case. The issue to be determined in this litigation is whether, *for purposes of the anti-trust laws,* the rela-

tionship of the operator to Richfield more nearly resembles (a) that of agency or employment or the other "intimate relationships" above discussed, or (b) that of an independent businessman who is a customer of and a part of the market for both Richfield and its competitors.

When the issue is so framed,[28] there can be little doubt that the L. O. operators are not customers or a legitimate market for Richfield's competitors.

None of the facets of the relationship[29] (excepting the sole incident of the passage of title to the petroleum products from Richfield to the operator, hereinafter discussed) is of a nature or character common to that of seller and buyer or supplier and customer. Consider the manner of the selection by Richfield of prospective operators. Sellers do not normally investigate the character, family life or habits of their customers. Nor do they receive from them

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[28]As distinguished from the issue as framed by the District Court in its Opinion; *i. e.*, whether the L. O. operator is (a) an employee or agent or (b) a tenant and independent contractor.

[29]See the description of these facets in the Statement on pages 12 to 19, hereinabove.

Error was assigned to the failure of the District Court to make findings of such facts, proved by uncontradicted evidence of witnesses for both Richfield and the government. [Assignments of Error I(5) and (6); R. 197-201.] Motion by Richfield under F. R. C. P. 52 that the District Court make findings of such facts was denied. [R. 193.]

When a trial court neglects to find a fact material to the determination of the cause, such neglect is equivalent to a ruling that such fact is immaterial. This presents a question of law which is a proper subject of review. (*The Francis Wright*, 105 U. S. 381, 387; 26 L. Ed. 1100, 1101, 1102 (1882); *The E. A. Packer*, 140 U. S. 360, 364; 35 L. Ed. 453, 456 (1891); *The City of New York*, 147 U. S. 72, 77; 37 L. Ed. 84, 87 (1893).)

applications resembling employment applications. Consider that Richfield has furnished to the operator a fully equipped service station at substantially less than its fair rental value, and whether that is a common incident of a buyer and seller relationship. Consider that "few, if any" of the L. O. operators had been independent dealers in their own stations prior to becoming L. O. operators in Richfield's stations [R. 1586-7], significant in its proof that such men had not formerly been customers of Richfield or others and subsequently converted by Richfield to a different status. Consider that before the prospective operator is installed in Richfield's station, he is informed that the manner of his operation of the station must conform to Richfield's requirements in a variety of matters and that his occupancy of the station may be terminated on 24-hours' notice. Consider that Richfield's control over the operator's activities is freely accepted and is not superimposed by the mere exercise of power on a relationship otherwise independent. Consider the arrangements Richfield makes with the operator for disposal or return of unsold Richfield petroleum products and approved TBA and tools. Consider that the prospective operator before he commences operation of the station is informed and knows that he will not be permitted to develop good will or make any charge for intangible business value to any successor operator. Consider the constant supervision, instruction and direction of the operator after his installation in the station. And finally, consider the types of financial assistance furnished by Richfield to the operators by which Richfield takes off their shoulders many of the financial risks of doing business and in effect guarantees them income on a basis more secure than the commissions ordinarily receivable by an agent.

In an article by F. R. Black in 29 Georgetown Law Journal 439 (1941) entitled "Exclusive Dealer Devices in the Marketing of Petroleum Products"[30] the author states that it is "grotesque" to claim that the operator of a station having most of the attributes of one of Richfield's L. O. stations is "an independent dealer" (pp. 450-451). For lack of a definition by courts of an independent business man, we quote the definition of Mr. Black (pp. 450-451):

> "It is common knowledge that an independent business operator has certain rights and privileges among them being, (a) the right to buy in a competitive market and deal with several companies, if he so desires; (b) the right to select his own fixtures and equipment; (c) to determine his own sales policy; (d) his method of advertising; (e) the manner of display of his products; (f) the good will of his business is his own, transferable at pleasure and for a consideration satisfactory to him; and (g) the continuation of his business is not dependent on the will of another."

When the factors present in the instant case are compared with the factors deemed important in the authorities above cited (particularly in the publishing company cases) and with those deemed important in the definition of an independent business man above quoted, it will be observed that in his relationship to Richfield, the L. O.

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[30]Richfield would contest most vigorously any contention that the purposes or objectives which Mr. Black ascribes to the creators of the so-called "Iowa Plan" there discussed have motivated Richfield in the creation or operation of the L. O. stations; and there is no finding of fact in this case of any of such motives or intentions on Richfield's part, and no evidence from which any such finding could validly be made.

operator is neither an independent business man nor a customer of Richfield or of its competitors.

It was shown at the trial that title to gasoline and other petroleum products delivered to the L. O. operators is not reserved by Richfield until sale by them. Title to the products passes to the operators on delivery. But the presence of the mere incident of the passage of title does not preclude a relationship from being considered one of agency for particular purposes and within particular frameworks of inquiry. The nature of the relationship is determined from the realities of the situation. Various cases, in addition to the publishing company cases above discussed, have held that the element of passage of title is not determinative of whether or not the relationship is one of agency. In the following cases, although not involving the anti-trust Acts, the Courts have held that an agency relation existed for various purposes notwithstanding the use of particular words or the incident of the passage of title:

Willcox & Gibbs Sewing Machine Co. v. Ewing, 141 U. S. 627, 635-637; 35 L. Ed. 882, 885 and 886 (1891);

Bendix Home Appliances v. Radio Accessories Co., 129 F. 2d 177, 181 (C. C. A. 8, 1942);

Marrinan Medical Supply v. Ft. Dodge Serum Co., 47 F. 2d 458 (C. C. A. 8, 1931);

Carroll Electric Co. v. Freed-Eisemann Radio Corporation, 50 F. 2d 993, 994 (C. A. D. C., 1931);

Moore Machinery Co. v. Stewart-Warner Corp., 27 Fed. Supp. 526, 529 (D. C. Cal., 1939);

Kane v. Chrysler Corporation, 80 Fed. Supp. 360, 363 (D. C. Del., 1948);

Philips v. United States, 59 F. 2d 881, 885 (C. A. D. C., 1932).

(3) THE DISTRICT COURT'S DECISION WAS BASED ON CERTAIN PREMISES WHICH ARE DEMONSTRABLY FALLACIOUS.

(a) The District Judge Erroneously Held That the Issues Here Involved Had Been Determined, in a Manner Adverse to Richfield's Contentions, in Standard Oil Company of California v. United States, 337 U. S. 293; 93 L. Ed. 1371.[31]

But analysis of the *Standard* case shows that the problems and issues here raised were not there presented, considered or discussed.

The *Standard* case involved (in addition to the 1063 employee operated stations) 5937 stations, of which 1800 were subleased by Standard to the operators under a sublease providing for exclusive dealing, and the remainder of which were covered by written contracts also providing for exclusive dealing. (78 Fed. Supp. 850, 854.) Of the 1800 stations so subleased by Standard, only 23 were owned by Standard. [Transcript of Record on Appeal to U. S. Supreme Court, Ex. 6-D, pp. 1315, 211.] It does not appear from the case that the remaining 1,777 stations subleased by Standard to dealers were not similar in nature to the 3-C stations here involved, *i. e.*, independent outlets originally leased by Standard from the same dealers who owned or controlled such outlets.

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[31]The District Court's Opinion states: "It [the inquiry] is reduced to the problem whether the agreements through which this commerce was handled are of the type condemned by the decision in the Standard Oil case, decided by me in 1948, and affirmed by the Supreme Court." [R. 76.]

The Opinion states further: "And the relationship is no different than that found in the 'leased-out' stations in the Standard case." [R. 80.]

Assuming, however, that the 1,777 stations were like the L. O. stations to the extent that each of Standard's sublessees was a person other than the owner, nevertheless no contention was made either in the District Court or on appeal to the Supreme Court that the 1800 sublessees from Standard were not independent businessmen.[32] There was no issue or contention that the functional relationship between Standard and the lessees of Standard's stations differed in any respect from the relationship between Standard and the service station dealers who owned their own stations and purchased products from Standard under the exclusive dealing contracts there involved.[33] No contention was made by defendant Standard in that action that there was any intimate relationship between it, as lessor, and the service station lessees there involved, or that as lessor, Standard either reserved or exercised the right of control over the manner of operation of the service stations by the lessees; nor did it appear that any of such leases were terminable by either the lessor or the tenant on short term notice.[34] Nor did it appear that rentals paid by Standard's lessees were substantially less than the fair rental value of the stations.

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[32]Standard had admitted in paragraph 13 of its Answer [Transcript of Record on Appeal to U. S. Supreme Court, p. 91]:

> "That approximately 1800 of said service stations are leased to *independent operators* by leases which obligate the lessee to handle and sell * * *."

[33]While nomenclature is inconclusive, Standard did refer alike to its sublessees and non-sublessees as "independent dealers." [See Ex. 6-D prepared by Standard, Transcript on Appeal to Supreme Court, pp. 1315, 211.]

[34]Standard's contracts were for varying specified terms or from year to year. The year to year instruments were terminable every six months upon thirty days' advance notice. (*Standard Oil Company of California v. United States*, 337 U. S. 293, 296; 93 L. Ed. 1371, 1377.)

The issue on appeal in the *Standard* case concerned *the nature of the proof* necessary to sustain a determination of the illegality of exclusive dealing provisions contained both in sales contracts and in subleases, and without any differentiation between them for the purpose of that issue. The Court said (*id.* at 299; *id.* at 1378):

> "The issue before us, therefore, is whether the requirement of showing that the effect of the agreements 'may be to substantially lessen competition' may be met simply by proof that a substantial portion of commerce is affected or whether it must also be demonstrated that competitive activity has actually diminished or probably will diminish."

The Supreme Court's decision recognized, however, that if an agency or employment relationship exists, any exclusive dealing required by the principal or employer would not violate Section 3 of the Clayton Act.[35]

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[35]The Court said (*id.* at 303; *id.* at 1380):

> ". . . The third—*Federal Trade Commission v. Curtis Publishing Co.*, 260 U. S. 568, 67 L. Ed. 408, 43 S. Ct. 210—went off on the ground that the contract involved was one of agency and so is of no present relevance."

The Court said (*id.* at 310; *id.* at 1384):

> ". . . Before the system of requirements contracts was instituted, Standard sold gasoline through independent service-station operators as its agents, and it might revert to this system if the judgment below were sustained. Or it might, as opportunity presented itself, add service stations now operated independently to the number managed by its subsidiary, Standard Stations, Inc. From the point of view of maintaining or extending competitive advantage, either of these alternatives would be just as effective as the use of requirements contracts, although of course in so far as they resulted in a tendency to monopoly they might encounter the anti-monopoly provisions of the Sherman Act. See *United States v. Aluminum Co. of America*, 148 F. 2d 416 (C. C. A. 2d Cir.)."

The Court said (*id.* at 311; *id.* at 1385):

In summary, the *Standard* case is dissimilar from a factual standpoint; and the legal issues here raised were not there involved. It does not support the District Court's decision here; but on the contrary, in its recognition that agency and employment relationships are excluded from the application of Section 3 of the Clayton Act, it supports Richfield's contentions.

"Though it may be that such an alternative to the present system of buying out of independent dealers and making them dependent employees of Standard Stations, Inc., would be a greater detriment to the public interest than perpetuation of the system, this is an issue, like the choice between greater efficiency and freer competition, that has not been submitted to our decision."

The Court said (*id.* at 298; *id.* at 1378):

"Given such quantitative substantiality, the substantial lessening of competition—so the court reasoned—is an automatic result, for the very existence of such contracts denies dealers opportunity to deal in the products of competing suppliers and excludes suppliers from access to the *outlets controlled by those dealers.*" (Emphasis supplied.)

Note that the language above quoted suggests that an agency or employment relationship (in absence of a monopoly aspect) would not violate the Acts even if applied to persons who were independent merchants in their own stations and whose character as such was changed by arrangement with the supplier. The instant case does not require a decision of that scope. The L. O. operators were not theretofore independent businessmen in stations owned or controlled by them; and the L. O. stations themselves were not outlets formerly operated by independent businessmen.

It should be noted also that the instant case cannot involve the application of that portion of the language above quoted, to wit: "although of course in so far as they resulted in a tendency to monopoly they might encounter the anti-monopoly provisions of the Sherman Act." The complaint is devoid of any charge under Section 2 of the Sherman Act of monopoly or attempted monopoly or purpose to effect monopoly; and the case therefore involves no issue of such nature. Furthermore, the entire record in this case discloses the very opposite of monopoly, both in purpose and effect. See Statement pp. 11 to 13 hereinabove for a discussion of Richfield's purpose in having and acquiring L. O. stations. Note also that the number of L. O. stations in existence as of December 31 of 1950 was less than the number of L. O. stations as of December 31 of 1940 or 1941. [Ex. 26-A; R. 323, 1540.]

(b) The District Judge Ruled That the L. O. Operators Are "Independent,"[36] Not by Determining Their Relationship to Richfield in the Light of All the Circumstances Here Present and Above Discussed, but by Considering Decisive the Existence of the Printed Form of Lease.

The District Court's Opinion emphasizes that the relationship is landlord and tenant, from which it reasoned that the operator could not be otherwise than independent. The Opinion states (emphasis supplied):

> "The foundation of the relations was the service station lease, denominated form 542."[37] [R. 78.]

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[36]By so ruling that the L. O. Operators are independent (even though such ruling was erroneous), the District Court tacitly recognized and acknowledged the validity of Richfield's basic premise; *i. e.*, that an essential element of illegality of an exclusive dealing restriction imposed by a supplier upon a person is the determination that such person is an independent businessman, and that his trade be the subject matter of competition.

The government likewise recognized in its complaint that since it had not charged Richfield with monopoly or conspiracy or specific intent to violate anti-trust laws, Richfield's contracts with the L. O. operators could violate those acts only if (a) the L. O. operators were independent businessmen, and (b) the business of the L. O. stations was a legitimate market and the subject matter of competition so that competitors could be injured by being foreclosed access therefrom. The complaint so charged in paragraphs 7, 13 and 21. [R. 2-8.]

[37]The provisions of the service station lease are incorrectly described in the following material respect in the District Court's Opinion:

> "The *habendum* clause of each lease leases the described real property and the improvements and facilities thereon to the designated lessee *for a definite period of time*, subject to 24 hours' termination clause. . . ." [Opinion, R. 78.]
>
> "For we have a relation which is the result of specific agreement, which calls for (a) *a fixed term*, . . ." [Opinion, R. 79.] (Emphasis supplied.)

There is no definite or fixed period in any lease of an L. O. station; the leases provide merely for continuation indefinitely until terminated on 24 hours' notice. [Exs. 1-B, 1-D, 1-E and 1-G; R. 243-4, 246-7, 248-9, 251-2, 567.]

"But when, through a formal and written instrument, *a relationship is established by which the exclusive possession and control of the property is turned over to another,* in exchange for a specified rental with full responsibility for the conduct of the business falling upon the lessee, with all profit or loss accruing entirely to him and not to the transferor,[38] the relationship satisfies all the requirements of an independent enterprise." [R. 80-1.]

"So Richfield cannot, *by creating the relationship of landlord and tenant,* long and anciently known to our law, with all the responsibilities that such relationship imposes on the transferee, restrain trade through an outlet by imposing illegitimate oral contracts which restrict the transferee to the handling of Richfield products or Richfield's sponsored products." [R. 89.]

"It follows that the L. O. operators are, *by the instrument of their creation,* independent business men, as that concept is understood in anti-trust law, * * *." [R. 89.]

The District Court's determination of the existence of a landlord-tenant relationship is predicated upon the L. O. operators having "exclusive possession of the premises against all the world, including the owner, . . ." [R. 79.] That the L. O. operator does have this right under

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[38]This statement concerning "all profit and loss" is unjustified in view of the undisputed proof of financial assistance given by Richfield to the L. O. operators of such nature that Richfield assumes the more consequential hazards of the business done by the operators. The assistance furnished by Richfield includes the subsidies at times of price wars, the low basic rental, the waivers of rental and rental reductions, etc., described in the Statement, on pages 17 to 19 hereinabove.

the terms of his arrangement with Richfield is, at best, most doubtful.

But grant that the Form 542 instrument [Exs. 1-B, 1-D, 1-E and 1-G; R. 243-4, 246-7, 248-9, 251-2, 567] is a lease and that it does create the "relationship of landlord and tenant," albeit on a 24-hours' termination basis. Acceptance of that classification for purposes of the incidents of the law of landlord and tenant does not carry with it, as the District Court fallaciously assumed, a concomitant determination that for purposes of the application of the anti-trust laws the L. O. operator is an independent business man.

Various cases have considered facts similar to those here presented, but within other frameworks of inquiry, and have determined that, *notwithstanding the existence of a lease or a landlord-tenant relationship,* the true relationship more closely resembles that of master and servant. The basis of such holding in each instance was the recognition of the control exercised by the lessor oil company over and beyond rights accruing from a simple landlord and tenant relationship.[39]

The different fields of law or frameworks of inquiry which such cases involved are:

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[39]It is significant that in many of such cases the oil company asserted unsuccessfully that the person in the position of the L. O. operator was not "controlled" or was an "independent contractor" on the grounds that he was a *lessee,* that he paid a specified rental for the station, that he paid the salaries and wages of his employees and helpers, that he assumed responsibility for and agreed to indemnify the oil company lessor for claims due to his negligence and other grounds.

(1') *Whether the Operator of an L. O. Station and the Helpers of Such Operator Are Employees of the Oil Company for Purposes of the Workmen's Compensation Acts.*

Continental Oil Co. v. Sirhall, 122 Colo. 332; 222 P. 2d 612 (1950);[40]

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[40]Here a helper of the oil company's lessee was injured and was held to be an employee of the oil company lessor under the Colorado Workmen's Compensation Act. The Court said:

> "We have repeatedly held that this section is valid and that thereby an obligation may, in proper case, be imposed against an owner *where the common-law relationship of employer and employee does not exist, in that one may be an employee by virtue of the statute, for the purpose of workmen's compensation, when in fact he is not an employee by common-law definition."* (Emphasis supplied.) (*Continental Oil Co. v. Sirhall,* 122 Colo. 332, 333; 222 P. 2d 612, 613 (1950).)

The Court took pains to point out that the fact that Continental was the lessor to Miller did "not of itself create liability." The Court held that to make a lessor liable under the Colorado Act, "there must be facts showing that he is operating, engaged in, or conducting his business by leasing; not merely that he is a lessor." The Court held that under the circumstances Continental "was operating its business by leasing part of the work of its business to a lessee." (*Id.* at 335; *id.* at 613.)

Significant in its application to the difference between Richfield's relationship to its L. O. operators in Richfield's stations on the one hand and to the 337 and 3-C dealers in their own stations is the discussion in the *Continental* case of an earlier Colorado case, *Bukowich v. Ford Motor Co.,* 99 Colo. 56, 59 P. 2d 470 (1936). In the *Bukowich* case, the Colorado court had held that the employee of a dealer in Ford Motor Company's products under a written sales contract was not to be considered an employee of the Ford Motor Company under the Colorado Workmen's Compensation Act. The *Continental* case distinguished the *Bukowich* case as follows:

> "In that case no question of operating a business by leasing was involved. There, Ford Motor Company did not own either the building or the equipment. Both were held by the local dealer either by virtue of ownership or of lease from some other person without power of termination by the company; there the sale of the Ford Motor Company products is not shown to have been the dominant part of the dealer's

Bieluczyk v. Crown Petroleum Corp., 134 Conn. 461; 58 Atl. 2d 380 (1948).[41]

(2') ***Whether the Oil Company Maintains Sufficient Control Over the Operators of L. O. Stations and Their Helpers to Subject the Oil Company to Liability for Chain Store Taxes in States Having Such Legislation.***

Maxwell v. Shell Eastern Petroleum Products, Inc., 90 F. 2d 39 (C. C. A. 4, 1937);

Standard Oil Co. v. State Board of Equalization, 110 Mont. 5; 99 P. 2d 229 (1940);[42]

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business. . . . Had that company [Ford Motor Company] owned and leased to the dealer a building equipped and adapted principally to the display, sale and service of Ford Motor Company products, by short term lease, and had the dealer's business been restricted almost exclusively to the sale of such products, then the situation might have been analogous to that here presented." (*Id.* at 336; *id.* at 614.)

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[41]Here the Court stated (*id.* at 468; *id.* at 384):

"The occupancy of the premises by Toomajian with the defendant's permission, for which he paid, falls within the general definition of a landlord and tenant relationship, 51 C. J. S., Landlord & Tenants, §1; but it is clear upon the facts found that the contract was really one of agency and that the use of the premises was incidental, a permissive use rather than one which gave an exclusive interest in the land. See *Guiel v. Barnes*, 100 Conn. 737, 742, 125 A. 91; 1 Underhill, Landlord & Tenant, §§210, 211, 213."

[42]The Montana chain store license tax law defined a store to include any establishment "owned, operated, maintained or controlled by the same person, firm, corporation, . . . in which goods, wares or merchandise or petroleum products of any kind, are sold, either at retail or wholesale."

The oil company there contended that its only connection with the stations was owning the parcels of land and leasing them "to independent persons" who in turn retailed the commodities sold to them by the oil company. The Court rejected Standard's conten-

Midwestern Petroleum Corp. v. State Board of Tax Commissioners, 206 Ind. 688; 187 N. E. 882 (1933).

When all of the indicia of Richfield's relationship with the L. O. operators are considered, the conclusion is inescapable that, notwithstanding the existence of a lease, the L. O. operator in his operation of the station is no more an independent merchant than would be a salaried employee or agent installed therein by Richfield.

(c) The District Judge Determined That the "Form" of the Transaction Chosen by Richfield (the 24-hour Lease) Prevents Richfield From Denying to the L. O. Operators the Right to Deal in Non-Richfield Products.[43]

The portion of the District Court's Opinion quoted in Footnote 43 illuminates the fallacy of its reasoning. The Court's statements prove that this is not a case where the Court painstakingly looked for reality and substance be-

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tion that the Act did not apply because the relationship between it and the operator was landlord and tenant:

> "As we have indicated, the record shows that the primary purpose of the plaintiff in its ownership of the stations and the arrangements under which the stations are leased is to secure the sale of the products of the plaintiff. That fact differentiates the position of the plaintiff and that of the ordinary landlord renting out property for retail store purposes. The ordinary landlord is compensated only by the rental received for the property." (*Standard Oil Co. v. State Board of Equalization,* 110 Mont. 5, 18; 99 P. 2d 229, 233 (1940).)

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[43]The Opinion states:

> "So Richfield cannot, by creating the relationship of landlord and tenant, long and anciently known to our law, with all the responsibilities that such relationship imposes on the transferee, restrain trade through that outlet by imposing illegitimate oral contracts which restrict the transferee to the handling of Richfield's products or Richfield's sponsored prod-

hind a form valid on its face. On the contrary, the District Court ignored the reality of the relationship and held that it is the form itself which creates the violation of the statutes. Assume that instead of a *lease* terminable on twenty-four hours' notice, either no written instrument at all had been used with the L. O. operators or that a written *license* containing comparable provisions had been required by Richfield before it permitted a prospective operator to enter its station. We respectfully submit that such difference in form, although it would eliminate the basis relied upon by the District Court for its determination of illegality, would not *in economic reality or in terms of restraint of trade* affect substantially the real issue whether the L. O. operator is an independent businessman or a legitimate market.

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ucts. Even if it be admitted that if the outlet were its 'exclusive agency,' the limitation could be imposed as an incident of ownership, *under the form it has chosen,* Richfield cannot deny to the dealers the right to deal with other suppliers as to their products, or to deny to such suppliers access to the dealers, so that these varied products may reach the public, whose protection the anti-trust laws seek." (Emphasis supplied.) [R. 89.]

The Opinion also states:

"And the obvious answer to the claim of ownership is the same which Courts give in tax cases to the contentions of taxpayers who, after having chosen to do business under a certain form of organization, try to have us disregard it, on the ground that they were, in reality, 'doing business with themselves.' And the answer is that a person choosing a particular entity in order to achieve certain results is not in a position to ask us to disregard it, when he wishes to avoid results unanticipated.

"So Richfield is tied to the form they chose. And if it does not give them immunity from the admitted restraints they impose through it, they must bear the consequences of their voluntary act, regardless of any contrary intention they may have had in choosing it." (Emphasis supplied.) [R. 85.]

The tax cases to which the Court refers are not apposite. The tax laws expressly distinguish between corporations and individuals in determining not only the rates of taxes but the manner and method thereof. The courts have consistently held that if a corporation is unreal or a sham, its identity may be disregarded for income tax purposes when necessary to protect the revenue. The courts have also held in tax cases that the taxpayer, however, cannot in turn demand that the corporate entity created by him be disregarded for tax purposes. (*Higgins v. Smith*, 308 U. S. 473, 477; 84 L. Ed. 406, 411 (1940); *Moline Properties v. Commissioner of Internal Revenue*, 319 U. S. 436, 439; 87 L. Ed. 1499, 1503 (1943).) The rule that a taxpayer cannot disregard the corporate entity created by him has no application to the instant situation because the rule is predicated on the fact that the form (corporate) selected by the taxpayer is squarely and expressly made the subject of legislation, and the tax results flow automatically from the mere existence of the corporation. The anti-trust laws, on the other hand, do not contain any comparable provision to the effect that certain anti-trust penalties will attend or flow from the creation of a lease of real property.

Nor is it true, as suggested by the District Court, that Richfield contended that its right to control the products sold by the L. O. operators at the L. O. stations was justified by Richfield's "ownership" of the stations. Richfield did not and does not so contend that the incident of ownership alone would justify such result. Richfield's con-

tention was and is that the nature of the relationship between Richfield and the L. O. operators must be determined by a consideration of all of the facts and circumstances and cannot be determined by any one facet or circumstance.

(d) The District Court's Determination [Conclusions of Law 6 and 9, R. 136-41] that the L. O. Stations Constitute a Substantial Market for Richfield's Competitors Was Erroneous.

The District Court failed to perceive that while the 337 and 3-C stations, owned and operated as they are by independent businessmen, are a legitimate market, the L. O. stations are not a market at all but merely Richfield's outlet to a market, *i. e.*, the motoring public.

The restrictions on the L. O. operators did not affect Richfield's competitors in their access to the motoring public any more than if the operators had been Richfield's salaried employees or agents handling consigned gasoline and operating on a commission basis. The testimony of the government's competitor witnesses that they had difficulty in selling lubricating oil and automotive accessories to the L. O. operators does not prove that such stations are a legitimate market for their products. Competitor salesmen admitted that they knew that L. O. stations were owned or leased by Richfield and that the operators were forbidden by Richfield to buy competitive products.[44] Their efforts to sell products to the L. O. operators through the back door proves merely that they were attempting a form of bootlegging. Comparable would be

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[44]See testimony of Ellis, Pennzoil salesman [R. 950]; Ransome, tire salesman [R. 1349-51]; and Behm, tire salesman [R. 1465-6].

an effort by Macy's department store to sell its merchandise to the salaried employees of its competitor Gimbel's for resale over Gimbel's counters. That Gimbel's forbids such occurrence neither shocks the conscience nor violates the anti-trust laws.

(e) The Cases of Timken Roller Bearing Co. v. United States, 341 U. S. 593; 95 L. Ed. 1199 (1951), and Kiefer-Stewart v. Seagram, 340 U. S. 211; 95 L. Ed. 219 (1951), Relied Upon by the District Court, Are Clearly Distinguishable.

In *Kiefer-Stewart v. Seagram,* 340 U. S. 211, 215; 95 L. Ed. 219, 224 (1951), it was held that an agreement between competitors Seagram and Calvert to sell liquor only to those wholesalers who would resell at fixed prices was an unlawful *conspiracy* under Section 1 of the Sherman Act; and that the fact of stock affiliation between Seagram and Calvert did not "make it impossible for them to have conspired in a manner forbidden by the Sherman Act."

Similarly, in *Timken Roller Bearing Co. v. United States,* 341 U. S. 593, 598; 95 L. Ed. 1199, 1206 (1951), it was held that stock affiliation between American Timken, British Timken and French Timken did not prevent a determination of *conspiracy* under Sections 1 and 3 of the Sherman Act under circumstances where the three companies, two of which were originally wholly independent and competing companies, had agreed to (1) the allocation of territories; (2) price fixing; (3) elimination of competition between themselves and cooperation to eliminate the competition of outsiders; and (4) participation in cartels to restrict imports to and exports from the United States.

Since there is no charge or issue of *conspiracy* in the Richfield action, the only conceivable point of resemblance in either such cases was the contention of American Timken Company that the restraints of trade above listed were "reasonable" because they were ancillary to a "joint venture." The Supreme Court properly rejected "the proposition that agreements between legally separate persons and companies *to suppress competition among themselves and others* can be justified by labeling the project a 'joint venture.'" (Emphasis supplied.) 341 U. S. at 598; 95 L. Ed. at 1206.

The above quoted language itself identifies the vital difference between the Timken and Richfield situations. Nowhere in the Richfield case can be found an arrangement between *competitors*, as in the *Timken* case, either to suppress or eliminate competition between themselves or to suppress the competition of others. The *Timken* case is merely an extension of the same doctrine above discussed that one will not be permitted, as a *device* to avoid what would otherwise be illegal under the anti-trust laws (either a restraint imposed upon competitors, as in *U. S. v. Masonite Corporation*, 316 U. S. 265, 279; 86 L. Ed. 1461, 1476, or a restraint imposed upon independent merchants who are the legitimate subject matter of competition, as in *Standard Fashion Co. v. Magrane-Houston*, 258 U. S. 346; 66 L. Ed. 653, and in *Carter Carburetor Corporation v. Federal Trade Commission*, 112 F. 2d 722), to assert that the other party is an agent or a joint venturer. The *Timken* case would be more apposite if Richfield had imposed unlawful restraints of exclusive dealing on the 337 and 3-C dealers who are independent merchants in their own places of business and had then at-

tempted to immunize the unlawful act by asserting a specious relationship of "joint venture" or agency.

The District Court erroneously thought that the element of illegality otherwise missing in the Richfield-L. O. situation was provided by the factor of control by Richfield over the L. O. operators. The Opinion emphasizes the statement made in the *Timken* and *Kiefer-Stewart* cases that "common ownership and control does not liberate corporations from the impact of the anti-trust laws." [R. 81-2.] The Opinion states further:

> "To follow it [Richfield's contention] would mean to turn defiance of law into a virtue, to make legitimate the very *means* of restraint. Granted that a business may create its own outlets, it can do so only by making them *its agency in truth and in fact.* It cannot do so by creating a well recognized legal estate, superimpose on it the oral limitations, the object of which is to restrain trade, and then claim legitimacy for this very restraint." (Emphasis by Court.) [R. 89.]

But it is obvious that the vice in a restraint of trade does not lie in the control itself. The stringent controls upon an employee or bona fide agent are not illegal, notwithstanding that they are also the "very means" of restraint. The vice in a restriction exists in its imposition either upon competitors (as in the *Timken* and *Masonite* cases) or upon independent business men whose trade is the subject matter of legitimate competition (as in the *Standard Fashion* and *Carter Carburetor* cases).

(f) The District Court in That Portion of Its Opinion Entitled "The Created Market" [R. 86 to 90] Misconstrued and Misstated Richfield's Contentions.

The Court's Opinion states:

> "Richfield contends that it 'created' these instrumentalities for its own purpose. For this reason, they argue that there could be no restraint of trade, because no competition is involved." [R. 86.]

Richfield did show, as stated by the District Court, that of the 1343 L. O. stations in existence as of December 31, 1950, Richfield had created 1092 of them, constituting 81.3 per cent. [Ex. W; R. 515, 1756.] The term "created by Richfield" was defined as referring to those stations built by Richfield or by the property owner under agreement with Richfield on sites which had never theretofore been used or equipped as a service station handling any petroleum products.

Richfield did not contend, as stated by the District Court, that "the mere creation of an exclusive form of outlet is, in itself, sufficient to avoid the consequence of the anti-trust laws." [R. 86.] Richfield's showing that in excess of 81 per cent of its stations were created by it is significant and relevant to the collateral issue regarding the L. O. stations (discussed in Part I-B of this Brief) that if the relationship between Richfield and the L. O. operators is not such as to be excluded from the Acts, nevertheless, Richfield's restriction on the L. O. operators is neither unreasonable under Section 1 of the Sherman Act, nor does it come within the qualifying clause of Section 3 of the Clayton Act.

B. If It Be Determined That the Relationship Between Richfield and the L. O. Operators Is Such That Richfield's Restrictions on Them Are Cognizable Under the Sherman and Clayton Acts, Nevertheless There Are No Facts Found by the District Court Upon Which It Could Properly Base Its Conclusion That the Restrictions Are Unreasonable Under the Sherman Act or That the Requirements of the Qualifying Clause of Section 3 of the Clayton Act Have Been Met.

SHERMAN ACT, SECTION 1.

It is axiomatic that not all restraints of trade are illegal, but only those determined to be unreasonable.[45] The tests of unreasonableness have been variously stated. The most recent pronouncement of a test in a Sherman Act case is in *United States v. Columbia Steel Co.*, 334 U. S. 495, 527, 528; 92 L. Ed. 1533, 1554 where the Court said:

> "In determining what constitutes unreasonable restraint, we do not think the dollar volume is in itself of compelling significance; we look rather to the percentage of business controlled, the strength of the remaining competition, whether the action springs from business requirements or purpose to monopolize, the probable development of the industry, consumer

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[45] *Standard Oil Co. v. United States*, 221 U. S. 1; 55 L. Ed. 619 (1911)
United States v. American Tobacco Co., 221 U. S. 106, 179; 55 L. Ed. 663, 693 (1911)
Board of Trade v. United States, 246 U. S. 231, 238; 62 L. Ed. 683, 687 (1918)
United States v. Columbia Steel Co., 334 U. S. 495; 92 L. Ed. 1533 (1948)
Appalachian Coals, Inc. v. United States, 288 U. S. 344, 360; 77 L. Ed. 825, 830 (1933).

demands, and other characteristics of the market. We do not undertake to prescribe any set of percentage figures by which to measure the reasonableness of a corporation's enlargement of its activities by the purchase of the assets of a competitor. *The relative effect of percentage command of a market varies with the setting in which that factor is placed.*" (Emphasis supplied.)

In the same case the Court said also:

"Exclusive dealings for rolled steel between Consolidated and United States Steel, brought about by vertical integration or otherwise, are not illegal, *at any rate until the effect of such control is to unreasonably restrict the opportunities of competitors to market their product.*" (Emphasis supplied.) (*Id.* at 524; *id.* at 1552.)

Other statements of the tests of unreasonableness are contained in *Board of Trade v. United States,* 246 U. S. 231, 238; 62 L. Ed. 683, 687 (1918),[46] and in *Appalachian*

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[46]The Court there said:

"But the legality of an agreement or regulation cannot be determined by so simple a test as whether it restrains competition. Every agreement concerning trade, every regulation of trade, restrains. To bind, to restrain, is of their very essence. The true test of legality is whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition, or whether it is such as may suppress or even destroy competition. To determine that question the court must ordinarily consider the facts peculiar to the business to which the restraint is applied; its condition before and after the restraint was imposed; the nature of the restraint, and its effect, actual or probable. The history of the restraint, the evil believed to exist, the reason for adopting the particular remedy, the purpose or end sought to be attained, are all relevant facts. This is not because a good intention will save an otherwise objectionable regulation, or the reverse; but because knowledge of intent may help the court to interpret facts and to predict consequences." (246 U. S. 231, 238; 62 L. Ed. 683, 687 (1918).)

Coals, Inc. v. United States, 288 U. S. 344, 361; 77 L. Ed. 825, 830 (1933).[47]

While the District Court determined that Richfield's restrictions upon L. O. operators were unreasonable restraints of trade under Section 1 of the Sherman Act [Conclusions of Law Nos. 2 and 7, R. 163-4], such a conclusion lacks foundation and is meaningless in the absence of findings supported by facts showing the unreasonableness.

The government did not offer evidence of any facts relative to any of the standards by which the unreasonableness of a restraint is to be measured. The government's proof consisted of a showing (1) that Richfield forbade the L. O. operators from handling or displaying competitive merchandise in Richfield's stations and equipment; (2) that Richfield enforced this limitation with the result that some of the L. O. operators, even if they desired on occasion to handle non-Richfield lube oil and grease and non-sponsored automotive accessories, did not do so; and (3) that certain salesmen of companies selling competitive lube oils and automotive accessories were unable to sell their products to those operators. The government showed for the years 1938 to 1950, inclusive, the numbers of L. O. stations and the volume of gasoline

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[47]The Court there said:

"The question of the application of the statute is one of intent and effect, and is not to be determined by arbitrary assumptions. It is therefore necessary in this instance to consider the economic conditions peculiar to the coal industry, the practices which have obtained, the nature of defendants' plan of making sales, the reasons which led to its adoption, and the probable consequences of the carrying out of that plan in relation to market prices and other matters affecting the public interest in interstate commerce in bituminous coal." (288 U. S. 344, 361; 77 L. Ed. 825, 830 (1933).)

sold therein and the dollar value thereof. [Ex. 26-A; R. 321-326, 336-341, 1540.]

The District Court based its determination of illegality under Section 1 of the Sherman Act on the above facts alone.

The proof of the existence of restraint is not proof that it is unreasonable unless the rule of reason is gone and exclusive dealing contracts are now held to be *illegal per se.*[48]

The District Court, in effect, considered the practices illegal *per se.* Despite the precept of the above cases that clearly relevant to the issue of reasonableness are the purpose and intent of the questioned acts and that the trial court shall inquire whether the action springs from business requirements or purpose to monopolize, the District Court's Opinion states:

> "And a specific intent, or good motive, for that matter, is not material when we deal with Section 1 of the Sherman Act or Section 3 of the Clayton Act." [R. 77.]

Despite the further precept of the cases that particularly relevant and to be investigated by the trial court are the economics of the industry involved and the competitive conditions therein, the District Court's Opinion states:

> "Other considerations, such as *economic necessity,* do not, and should not enter into our inquiry whether

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[48]Exclusive dealing contracts are not illegal *per se* under Section 1 of the Sherman Act.

United States v. Columbia Steel Co., 334 U. S. 495, 522-524; 92 L. Ed. 1533, 1551, 1552 (1948)

United States v. Bausch & Lomb Optical Co., 321 U. S. 707, 728, 729; 88 L. Ed. 1024, 1038, 1039 (1944).

the practices here involved violated either statute. . . . Economic considerations are relevant in determining legislative policy. They may be important in interpreting the limit of that policy. They do not constitute an excuse for the violation of the legislative policy declared in a statute." (Emphasis by Court.) [R. 77-8.]

We respectfully urge the Supreme Court to consider the state of the record in this case in the light of the various factors which this Court has held to be relevant to the problem of reasonableness and which are to be inquired into before the restraint may be determined to be unreasonable (unless, of course, as stated in *United States v. Columbia Steel Co.*, 334 U. S. 495, 522; 92 L. Ed. 1533, 1551, the restraint is either illegal *per se* or is accompanied with a specific intent to accomplish a forbidden restraint, neither of which exceptions is involved in the instant case):

(a) Whether Richfield's Purpose With Regard to the L. O. Stations Is the Restraint or Suppression of Competition or Whether Its Acts Spring From Business Requirements.[49]

The government offered no proof at all on this factor. Richfield's proof explained its need for its own outlets, *i. e.*, that the intense competition for the business of the

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[49] *United States v. Columbia Steel Co.*, 334 U. S. 495, 527, 528; 92 L. Ed. 1533, 1544 (1948)
United States v. Yellow Cab Co., 332 U. S. 218, 227; 91 L. Ed. 2010, 2018 (1947)
United States v. Yellow Cab Co., 338 U. S. 338; 94 L. Ed. 150 (1949)
United States v. Paramount Pictures, 334 U. S. 131, 174; 92 L. Ed. 1260, 1301 (1948)
Appalachian Coals, Inc. v. United States, 288 U. S. 344, 361; 77 L. Ed. 825, 830 (1933).

independent service station dealers resulted in Richfield's being unable to depend upon such dealers as the market for a sufficient volume of petroleum products. Richfield's proof also showed the factors which explained Richfield's increasing need for service station outlets following World War II. Chief among these were (1) Richfield's increase by 32½% of its refinery capacity for the manufacture of gasoline, which increase occurred during the war at the request of the government,[50] and (2) the sharp decrease in the government's purchases of gasoline from Richfield on the day following V-J Day in 1945, when purchases were cut down from 17,000 barrels per day to 2,000 to 3,000 barrels per day. (See Statement, pp. 12 and 13 hereinabove.)

Accordingly, it was demonstrated that Richfield's business purpose was to stay in the market as a competitor; it had no purpose to suppress competition or prevent its competitors from reaching the market by their own efforts.

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[50]Compare *United States v. Columbia Steel Co.*, 334 U. S. 495; 92 L. Ed. 1533 (1948) where the purpose of the acquisition of Consolidated Steel by United States Steel was the need by United States Steel of outlet for steel manufactured at the Geneva, Utah, plant purchased by United States Steel from Defense Plant Corporation with the approval and encouragement of the government.

Note particularly that in the *Columbia Steel* case the valid need for outlet justified the acquisition of a *competitor* and *customer* of United States Steel. The L. O. stations created and acquired by Richfield were neither its competitors nor its customers. See discussion, on page 94 above, of the "self-created" L. O. stations and, on pages 13 and 14 above, of the fact that the L. O. operators had not previously been independent dealers.

The District Court made no findings of such facts and denied Richfield's motion that it do so. [R. 193.] The District Court explained in its Opinion that such facts concerning intention are immaterial.

(b) Whether the Effect of the Practice Complained of Has Been to Unreasonably Restrict the Opportunities of Competitors to Market Their Products.[51]

The government offered no proof whatsoever on this score. True, the government's competitor witnesses said they could not sell or had difficulty in selling to the L. O. operators; but that fact needed no proof and could be inferred from Richfield's acknowledgment that it forbade the L. O. operators to buy from competitors. Such testimony, without more, does not prove or even tend to prove that the competitors' opportunities to market their products were unreasonably restricted. Such result could be proved by a showing, if the facts so warranted, that the business of competitors seriously declined, that there were but few or no other outlets for their products available to them, etc. But no effort at proof of such nature was suggested by the government.

The District Court made no finding that the opportunities of competitors to market their products had been unreasonably restricted; and had it done so, there are no facts in the record which could support the same.

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[51] *United States v. Columbia Steel Co.*, 334 U. S. 495, 524; 92 L. Ed. 1533, 1552 (1948).

(c) Whether Richfield Has the Position of Dominating Power in the Industry Affected.[52]

The government made no effort to prove this.

Richfield effectively proved that it had no dominating power. It showed its minority position in the industry. See the comparative statistics discussed in the Statement on pages 11 and 12 hereinabove. See also Exhibit M-7 [R. 441-8, 1560] which shows the relative positions of the various gasoline distributing companies in the Western Area based on volume of taxable motor fuel sales.

The District Court made no finding of such facts.[53]

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[52]*Standard Oil Co. (Indiana) v. United States,* 283 U. S. 163, 179; 75 L. Ed. 926, 951 (1931)

Standard Oil Company of California v. United States, 337 U. S. 293, 308; 93 L. Ed. 1371, 1383 (1949)

United Shoe Machinery Corp. v. United States, 258 U. S. 451, 457, 458; 66 L. Ed. 708, 717 (1922)

Federal Trade Commission v. Paramount Famous-Lasky Corp., 57 F. 2d 152, 155, 156 (C. C. A. 2, 1932).

[53]The attitude of the District Court to the statistical evidence [Exs. M-1 to M-13] is reflected by the Court's comments at the time it passed on the government's objections to the offer of such evidence. The District Court said:

> "I am merely letting them in so as to have them in the record. If you [counsel for Richfield] want to make an issue of that, I will strike them out so you have a good point." [R. 1558.]

> "So I do not want to intimate that I believe it is of any materiality, because that is the argument that Standard made. But I am allowing it into the record so it will be there." [R. 1558.]

(d) What the Competitive Conditions Are in the Industry and the Strength of Richfield's Competition.[54]

The government offered no proof concerning these matters.

Richfield proved that the industry is intensely competitive [R. 1580]; that there are 68 companies selling gasoline to service station dealers in the western area each of which sells in excess of one million taxable gallons of gasoline per year and that the number has remained fairly constant for a period of twelve years [Ex. M-8; R. 449-53, 1560]; that there are 121 companies marketing to service station dealers in the Western Area their own brands of lubricating oil and that the number has increased sharply since 1946. [Ex. M-9; R. 454-57, 1560.]

The District Court made no finding on these matters.

(e) Whether the Public Interest Has Been Harmed or Adversely Affected.[55]

No proof of anything pertinent to this subject matter was offered by the government; nor are there findings concerning the same.

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[54] *United States v. Columbia Steel Co.*, 334 U. S. 495; 92 L. Ed. 1533 (1948)
Board of Trade v. United States, 246 U. S. 231, 238; 62 L. Ed. 683, 687 (1918)
Appalachian Coals, Inc. v. United States, 288 U. S. 344, 360; 77 L. Ed. 825, 830 (1933)
Standard Oil Co. (Indiana) v. United States, 283 U. S. 163; 75 L. Ed. 926 (1931).

[55] *Apex Hosiery Co. v. Leader*, 310 U. S. 469, 499, 500; 84 L. Ed. 1311, 1326, 1327 (1940)
Wilder Manufacturing Co. v. Corn Products Refining Co., 236 U. S. 165; 59 L. Ed. 520 (1915)
United States v. American Tobacco Company, 221 U. S. 106, 179; 55 L. Ed. 663, 693 (1911)
Nash v. United States, 229 U. S. 373, 376; 57 L. Ed. 1232, 1235 (1913).

Accordingly the District Court decision that the restriction on the L. O. operators was an unreasonable restraint of trade is not supported by anything in the record and is clearly erroneous.

CLAYTON ACT, SECTION 3.

Whether Richfield's restrictions on the L. O. operators violate Section 3 of the Clayton Act depends upon whether there is a showing of facts sufficient to meet the requirements of the qualifying clause thereof, to wit,

> ". . . where the effect of such lease, sale, or contract for sale . . . may be to substantially lessen competition or tend to create a monopoly in any line of commerce." (15 U. S. C. A. Sec. 14.)

It is true that *Standard Oil Company of California v. United States*, 337 U. S. 293, 313, 314; 93 L. Ed. 1371, 1385, 1386 held that the Clayton Act did not require an economic investigation "of the same broad scope as was adumbrated with reference to unreasonable restraints of trade" and that "the qualifying clause of §3 is satisfied by proof that competition has been foreclosed in a substantial *share* of the line of commerce affected."[56]

The *Standard* case did not hold that exclusive dealing contracts are *illegal per se*, nor that the qualifying clause

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[56]The Court said:

> "We conclude, therefore, that the qualifying clause of §3 is satisfied by proof that competition has been foreclosed in a substantial *share* of the line of commerce affected. It cannot be gainsaid that observance by a dealer of his requirements contract with Standard does effectively foreclose whatever opportunity there might be for competing suppliers to attract his patronage, and it is clear that the affected *proportion* of retail sales of petroleum products is substantial." (Emphasis supplied.) (337 U. S. at 314; 93 L. Ed. at 1386.)

may be ignored for all purposes. Notwithstanding the circumscribed effect given the qualifying clause, nevertheless under the Standard rule there still remains the essential element of "proof" of substantiality, *i. e.*, facts sufficient to support a finding that the *"share"* or affected *"proportion"* of the line of commerce is "substantial." The words "share" and "proportion" denote the quality of comparativeness, not of absolutism. What may be substantial on a comparative basis in a given set of facts may be considered wholly unsubstantial in a different setting.

In the *Standard* [illegible]*e*, substantiality was found to exist in the light of the following facts:

(1) Standard, while it did not of itself dominate the market, was nevertheless the largest seller in the field, and its combined sales amounted to 23% of the total taxable gallonage;

(2) The independent service stations covered by the exclusive dealing contracts there held illegal, sold 6.7% of the total sales; and sales by company-owned service stations constituted 6.8% of the total sales;

(3) The number of service stations, contracts with which were held illegal, was 5,937, which constituted 16% of the retail gasoline outlets in the western area. These stations purchased in one year approximately $57,000,000 worth of gasoline and approximately $8,000,000 worth of other products.

(4) While the length of time Standard operated as a competitor in the western area does not appear, mention is made in the decision that *before 1934,* Standard's

sales of petroleum products to independent service stations were made pursuant to agency agreements.

In the *Richfield* case, the District Court concluded that the number of outlets and volume of business covered by all of the stations (L. O., 337 and 3-C) in the aggregate, "is substantial whether considered comparatively or not." [Conclusion of Law No. 10; R. 165.] While the findings of fact cover the numbers of stations and volume of business done by Richfield [Finding Nos. 30 to 37; R. 154-7], the District Court made no findings by which such numbers could be considered *comparatively* with relevant industry totals; and the District Court denied Richfield's motion that it make such findings. [R. 193.]

We respectfully submit that the District Court's determination of substantiality cannot be supported in view of the following undisputed facts:

(1) Unlike Standard, Richfield is not the largest seller of gasoline in the Western area. It was sixth in volume of sales in 1949 and 1950 and seventh in 1947 and 1948. Richfield's combined sales in 1950 amounted to 7.3% of the total taxable gallonage. [Ex. M-7; R. 441-8, 1560.]

(2) The volume of gasoline sold at L. O. stations in 1950 was 3.18% of the total taxable sales of motor fuel by all companies and was 4.9% of the volume of gasoline sold by all companies to all stations. [Ex. M-5; R. 437-40, 1559.]

The volume of gasoline sold at the L. O. stations was 2.71% of the total volume of gasoline manufactured and

available for sale in the Western area in 1950. [Ex. Z; R. 517, 1768.]

(3) The number of Richfield L. O. stations was 1,343 as of December 30, 1950. To these stations Richfield sold in 1950 $23,790,968.00 worth of gasoline. [Ex. 26-A; R. 338, 1540.]

In 1948 Richfield's L. O. stations constituted 3.28% of all retail gasoline outlets in the Western area. [Ex. M-4; R. 436, 1557.]

(4) Richfield is a relative newcomer in the Western area, it having commenced to do business on March 12, 1937. [Finding 5, R. 135.]

We respectfully submit further that when consideration is given to the fact that in excess of 81% of the L. O. stations were originally created by Richfield because of Richfield's need for outlets in order to remain as a competitive factor in the industry and that when consideration is given to Richfield's status as a relative newcomer in its marketing area, it can hardly be said fairly that there is proof "that competition has been foreclosed [by Richfield] in a substantial share of the commerce affected." Even without conducting the economic investigation applicable in a Sherman Act proceeding and by limiting the issue to the test for Clayton Act purposes enunciated by the *Standard* case, the facts in the Richfield situation, as disclosed by the record, prove that the share or proportion of the line of commerce affected, while not insignificant, is nevertheless not substantial.

C. If It Be Determined That Richfield's Restrictions on the L. O. Operators Do Violate Either Section 1 of the Sherman Act or Section 3 of the Clayton Act, the Judgment of the District Court Must Nevertheless Be Reversed Because the Injunctive Provisions Relating to the L. O. Stations Are Erroneous and Unduly Onerous in Three Respects.[57]

FIRST: Paragraph VI of the Judgment enjoins Richfield from exercising, for any reason, the 24-hour termination clause contained in any L. O. lease, and enjoins Richfield from cancelling any L. O. lease on less than thirty days' written notice.

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[57] Paragraph VI of the Judgment provides as follows:

"Richfield, its successors or assigns, its officers, directors, agents, representatives, and all persons and corporations acting or claiming to act on its behalf, are hereby perpetually enjoined from exercising the 24-hour termination clause contained in any lease which it now has with or which is in effect between itself and any independent dealer operating a retail outlet under an L-O type of arrangement with defendant, and is perpetually enjoined from cancelling any lease which it now has with or which may be in effect between itself and any independent dealer operating a retail service station under the L-O type of arrangement on less than 30-days' written notice to any such dealer. Such 30-day cancellation privilege may be exercised by defendant only for a breach of any of the written covenants contained in any written lease entered into between Richfield and an independent dealer operating a retail outlet under the L-O type of arrangement and by written notice sent by registered mail to such dealer advising him of such alleged breach and notice of cancellation therefor. A copy of any such written notice of cancellation shall be sent by registered mail to the Attorney General of the United States or to his duly authorized representative designated by the Attorney General in writing to Richfield at the time said written notice of cancellation is sent to such dealer by defendant." [R. 168.]

The District Court's Opinion[58] explains that this portion of the Judgment is based upon the Court's view that the lease creates a month to month tenancy; that under state and federal law,[59] it may not be terminated by either party except on at least one month's (30 days) prior notice; and that the 24-hour termination clause is against public policy.[60]

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[58]The Opinion states:

"And I am inclined to think that, because of the conflict of the 24-hours' termination clause with the monthly rental provisions, Courts would consider the tenancy created by the L-O agreements, *at least*, a month-to-month tenancy *terminable only* upon the minimum notice required in such cases." (Emphasis by Court.) [R. 83.]

The Opinion states further:

"The 24-hours' termination clause is invalid, against public policy, and cannot, either under state or federal law, be enforced as a means of terminating the lease for even legal grounds by any notice by either side less than at least the minimum rental period for which rent is reserved, one month." [R. 94.]

[59]We are unaware of what "federal law" could be applicable to this phase of the problem, particularly in view of the doctrine of *Erie R. Co. v. Tompkins*, 304 U. S. 64; 82 L. Ed. 1188 (1938).

The two federal cases cited in footnotes 24 and 25 to the Opinion do not apply "federal law" but refer to the applicable tenancy laws of California and North Dakota, respectively.

[60]In *Devonshire v. Langstaff*, 10 Cal. App. 2d 369, 372, 51 P. 2d 902, 904 (1935), the Court said:

". . . There is nothing stipulated in the lease that is beyond the power of the parties. There is nothing in the contractual provision for the termination of the lease *that violates any rule of public policy*, and *that parties may, in their lease, provide for the termination thereof upon notice different*

We respectfully submit that this portion of the decree is erroneous, because (a) it is based upon an assumption of the legal incidents of a landlord-tenant relationship under state law, which has no relevance in the formulation of a decree designed to enjoin anti-trust violations; and (b) its premise is fallacious, the state law having been incorrectly interpreted.

The District Court's determination that Richfield's L. O. lease form created a month to month tenancy was predicated on an assumed conflict in the lease between the twenty-four hour termination clause and the monthly rental provisions. There is no conflict. The District Court overlooked the provisions in each lease: "Rent for any fractional part of a month shall be duly prorated on the basis of the rent for said month as herein specified." [Exs. 1, 1-A, 1-B, 1-D, 1-E and 1-G; R. 239-40, 241-2, 243-4, 246-7, 248-9, 251-2, 567.] Furthermore, if there were a conflict, the twenty-four hour termination clause would prevail over the presumption that a lease for an indefi-

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from and superseding that prescribed by the code is well established. (*Conner v. Jones*, 28 Cal. 59, 60; *Watkins v. McCartney*, 57 Cal. App. 643 (207 Pac. 909); *Buhman v. Nickels & Brown Bros.*, 1 Cal. App. 266 (82 Pac. 85); *Jameson v. Chanslor-Canfield Midway Oil Co.*, 176 Cal. 1 (167 Pac. 369); *Wisner v. Richards*, 62 Wash. 429 (113 Pac. 1090, Ann. Cas. 1912D, 160); sec. 1946, Civ. Code.)

"If, therefore, the parties could by agreement, waive compliance with the sections of the Civil Code prescribing notice, then we need not concern ourselves with the requirements of the various code sections dealing with notice of termination of lease." (Emphasis supplied.)

nite term is a month to month tenancy if the rent is payable monthly.[61]

Assuming, however, that the District Court's determination was correct that the lease does create a month to month tenancy, its decision that such a tenancy cannot be terminated except on at least thirty days' notice is erroneous. The decision ignores the statutes of the six Western States in which the lease form is used, the majority of which provides for termination by notice shorter than thirty days.[62]

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[61] *In the absence of express agreement,* the reservation and payment of rent at stated periods is the principal criterion to determine whether a lease for an indefinite period is for a term from year to year, month to month, week to week or day to day.

The parties to a lease may, by express agreement, fix termination privileges in the various types of tenancies at will differing from periods fixed for the payment of rent.

Camp v. Matich, 87 Cal. App. 2d 660, 665-666, 197 P. 2d 345, 349 (1948)
Devonshire v. Langstaff, 10 Cal. App. 2d 369, 372, 51 P. 2d 902, 904 (1935)
Hull v. Laugharn, 3 Cal. App. 2d 310, 314, 39 P. 2d 478, 480 (1934)
Wolfer v. Hurst, 47 Ore. 156, 161, 82 Pac. 20 (1905)
Say v. Stoddard, 27 Ohio State 478 (1875)
Jones, Landlord and Tenant, Sec. 215, p. 253 (1906)

[62] CALIFORNIA: 30 days in the absence of agreement; but provision permitting agreement for termination on seven days' notice. *Cal. Civ. Code,* Sec. 1946.

WASHINGTON: 20 days for unlawful detainer. *Remington Revised Statutes of Washington,* Sec. 812.
30 days for termination. *Remington Revised Statutes of Washington,* Sec. 10619.
Union Oil Co. v. Walker, 150 Wash. 151, 272 Pac. 64 (1928), holds 20-days notice sufficient.

OREGON: 30 days *"except as otherwise provided by statute or agreement." Oregon Compiled Laws Annotated,* Sec. 8-307.

ARIZONA: 10 days. *Arizona Code Annotated,* Sec. 71-304.

NEVADA: 15 days. *Nevada Compiled Laws,* Sec. 9135.

IDAHO: One month. *Idaho Code Annotated,* Sec. 55-208.

SECOND: Paragraph VI of the Judgment enjoins Richfield from exercising the "30-day cancellation privilege" (created by the District Court) excepting "only for a breach of any of the written covenants contained in any written lease" with an L. O. operator.[63]

We submit that this decree is both punitive and confiscatory. Although the lease expressly gives both Richfield and the L. O. operator the right of termination at any time with or without cause, Richfield is enjoined from using it except for breach of the written covenants. The District Court first decided that the "form" of the transaction chosen by Richfield, *i. e.*, the lease, was the factor that compelled its determination of illegality; and the Court then enjoined Richfield from changing the form in so far as the existing 1343 L. O. leases are concerned. If the Supreme Court should affirm the determination of illegality on the ground stated in the District Court's Opinion, *i. e.*, that L. O. operators are not employees or agents "in truth and fact" [R. 89] and if this injunction becomes effective, Richfield cannot terminate any of the 1343 leases to install in any L. O. station either a salaried employee or "true" agent.

Observe that the operative written covenants of the lease are limited largely to maintaining the premises in good repair and condition and to paying the rent. The

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[63]State laws permit the lessor to terminate a month to month tenancy by notice whether or not there is a breach by the tenant (See statutes cited in Note 62.) The Judgment deprives Richfield of this right in all six States.

lease does not contain provisions concerning the many requirements relating to the manner of operation of the station of which the operator is informed before he is installed, only one of which is the basis of this litigation. Consider that the rent payable is substantially (33⅓%) less than the fair rental value of the property. Recall that since there is no stated expiration date, the lease will continue until terminated by one of the parties. Under these circumstances, it is to be anticipated that the L. O. operator will take care not to breach the written covenants of his lease and will thus retain his sinecure for life regardless of devoting the station entirely to non-Richfield gasoline or oils.

As to the 510 fee-owned L. O. stations [Ex. W; R. 515, 1756], Richfield is enjoined for the lives of the respective operators from obtaining their fair rental value. As to the remaining 833 L. O. stations leased by Richfield from property owners, Richfield is required for the duration of the existing underlying leases to absorb as a penalty the difference between the rents payable thereunder and the lesser rents receivable by it from L. O. operators. For the year 1950, the amount of such difference was $485,536.54. [Ex. AA, R. 518, 1778.]

The prospect of an annual "fine" in such amount reveals in harsh outlines the effect of the District Court's decree in a civil action. That the amount is not payable by Richfield to the government but instead is largesse bestowed by the Court on the L. O. operators does not prevent its being, in essence, a fine in an extraordinary large amount.

We recognize that the courts have broad powers in framing their decrees in equity actions to effectuate the purposes of the anti-trust laws. But in civil proceedings the decree should be remedial and not punitive.[64]

Even in those flagrant cases of violation where the remedy of divestiture was held justified, the decrees requiring the disposition of properties unlawfully held permit the defendant an ample time to secure the market value thereof.[65]

Here, as to properties not unlawfully held, Richfield is required in effect to dedicate them (to the extent of the loss of rental value) to the existing L. O. operators. A somewhat comparable result was condemned in *Hartford-*

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[64]In *United States v. National Lead Co.*, 332 U. S. 319, 338; 91 L. Ed. 2077, 2094 (1947), the Court said:

> "This is a civil, not a criminal, proceeding. The purpose of the decree, therefore, is effective and fair enforcement, not punishment."

In *Hartford-Empire Co. v. United States*, 323 U. S. 386, 409; 89 L. Ed. 322, 359 (1945), the Court said:

> "The Sherman Act provides criminal penalties for its violation, and authorizes the recovery of a penal sum in addition to damages in a civil suit by one injured by violation. It also authorizes an injunction to prevent continuing violations by those acting contrary to its proscriptions. The present suit is in the last named category and we may not impose penalties in the guise of preventing future violations."

[65]*Hartford-Empire Co. v. United States*, 323 U. S. 386, 426; 89 L. Ed. 322, 368 (1945).

United States v. Aluminum Co. of America, 91 Fed. Supp. 333, 419 (D. C. N. Y., 1950).

Empire Co. v. United States, 323 U. S. 386, 414; 89 L. Ed. 322, 362 (1945).[66]

THIRD: The District Court denied Richfield's motion [R. 193] to include in its decree a provision comparable to that included in the decree formulated by the same District Judge in *United States v. Standard Oil Co.,* 78 Fed. Supp. 850 (D. C. Cal., 1948), the case which he deemed determinative of this litigation.[67]

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[66]Here the Supreme Court said:

"Since the provisions of paragraphs 21 to 24 inclusive, in effect confiscate considerable portions of the appellants' property, we think they go beyond what is required to dissolve the combination and prevent future combinations of like character.

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"It is suggested that there is not confiscation since Hartford might, with the later consent of the court, sell its patents. Under the decree as entered below nothing can be obtained by Hartford for the use of its patents and we cannot speculate as to what might be the ultimate adjustments made by the trial court in the decree.

"If, as suggested, some of Hartford's patents were improperly obtained, or if some of them were awarded a priority to which the invention was not entitled, avenues are open to the Government to raise these questions and to have the patents canceled. But if, as we must assume on this record, a defendant owns valid patents, it is difficult to say that, however much in the past such defendant has abused the rights thereby conferred, it must now dedicate them to the public." (323 U. S. at 414; 89 L. Ed. at 362.)

[67]The decree in the *Standard Oil* case contained the following provision:

"IX.

"Nothing contained in this judgment shall enjoin or restrain either defendant from selling or contracting to sell petroleum products and/or automotive accessories including such products as are sponsored by defendants, to independent dealers on the condition that any pump or tank or other container or receptacle for such products, furnished by defendant and marked as such to an independent dealer, shall be used solely for the

Richfield's motion was made on the ground that the omission in the Richfield decree of a similar qualification concerning the operators' use of Richfield's pumps, tanks or other containers serves to enjoin Richfield from engaging in important competitive marketing practices which Richfield's largest competitor, Standard Oil Company of California, is expressly permitted to engage in by the judgment in the *Standard* case. Standard is given the right to require exclusive dealing in Standard's products in equipment owned by Standard and located in stations including those owned or controlled by independent dealers having all of the attributes of the 337 and 3-C dealers in this case. Antithetically, Richfield is denied the right to control the products sold through its equipment in Richfield's own stations.[68]

The Supreme Court has recognized the wisdom of formulating anti-trust decrees in such fashion to preserve the competitive abilities of component members of an industry. *Ford Motor Co. v. United States,* 335 U. S. 303; 93 L. Ed. 24 (1948.)

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storing, handling or dispensing of defendant's petroleum products and to prescribe by agreement or regulations not inconsistent with the provisions of this decree, for the storage, handling, or dispensing of such products." [Tr. of Record on Appeal to the Supreme Court, No. 279, October Term, 1948, p. 192.]

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[68]At the hearing on Richfield's objections to the Findings and Judgment proposed by the government (in which objections the same amendment to the Judgment was requested), the government asserted that the reason for the inclusion of paragraph IX in the Standard decree was that Standard had loaned receptacles for petroleum products to various dealers, which receptacles bore Standard's name and a description of the product. [R. 1995.] Although Richfield in turn called attention to the fact that the same factor was present in each L. O. station [R. 2004], the District Court denied Richfield's motion. [R. 192-3.]

II.

THE DEALER STATIONS.

A. The Government Failed to Prove Either of the Essential Elements of Its Charges of a Restraint Concerning the Dealer Stations, i. e., (1) That There Are Oral Exclusive Dealing Contracts Between Richfield and the Dealers [Compl. pars. 17-19; R. 6-7] and (2) That Richfield Required the Dealers to Adhere to Such Oral Agreements by Coercive Methods [Compl. par. 20; R. 7-8]. The District Court's Findings of Fact Relating to the Above Charges as Well as Its Findings Concerning the Effect on the Dealers and on Competitors Are "Clearly Erroneous" Under Rule 52(a), F. R. C. P.

The written sales contracts used with the 337 and 3-C dealers are not requirements or exclusive dealing contracts. The contracts contain an obligation on the dealer to buy a specified minimum quantity and give him the right to buy additional quantities subject to a specified maximum.[69] A contract of such nature leaves the purchaser freedom to buy additional quantities of the same products from any and all competitors of the seller.[70] Ac-

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[69]The "minimum" quantity which the dealer obligates himself to buy is substantially less than his anticipated future requirements based upon his past experience. (See facts discussed in the Statement on pp. 20 to 22, and pp. 31 to 33, hereinabove.)

[70]This result was recognized in *Standard Oil Company of California v. United States*, 337 U. S. 293, 303, 304; 93 L. Ed. 1371, 1380, 1381. In discussing *Federal Trade Commission v. Sinclair Refining Company*, 261 U. S. 463; 67 L. Ed. 746, the Court said:

> "The Sinclair case involved the lease of gasoline pumps and storage tanks on condition that the dealer would use them only for Sinclair's gasoline, but Sinclair did not own patents on the pumps or tanks and evidently did not otherwise control

cordingly, such a contract does not come within the description in Section 3 of the Clayton Act of the type of contracts there dealt with. Nor can it be a restraint of trade under Section 1 of the Sherman Act.

Evidently recognizing such result, the government's complaint charged, as the basis of illegality, that (1) Richfield had made supplemental *oral* contracts, agreements and understandings with *each* of the 337 and 3-C dealers by which they agreed to handle only Richfield petroleum products and approved automotive accessories [Compl. pars. 17-19; R. 6-7]; and (2) Richfield had required such dealers to adhere to such oral agreements and understandings by certain alleged *coercive* methods: (a) by threats of cancellation of the written sales contracts and leases unless the alleged oral agreements were made and adhered to; (b) by inspection, policing and supervision of the

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their supply. Although the Trade Commission had found that few dealers needed more than one pump, the Court concluded that 'the record does not show that the probable effect of the practice will be unduly to lessen competition.' 261 U. S. at 475, 67 L. Ed. 753, 43 S. Ct. 450. The basis of this conclusion was thus summarized:

" 'Many competitors seek to sell excellent brands of gasoline and no one of them is essential to the retail business. The lessee is free to buy wherever he chooses; he may freely accept and use as many pumps as he wishes, and may discontinue any or all of them. He may carry on business as his judgment dictates and his means permit, save only that he cannot use the lessor's equipment for dispensing another's brand. By investing a comparatively small sum, he can buy an outfit and use it without hindrance. He can have respondent's gasoline, with the pump or without the pump, and many competitors seek to supply his need.' *Id.* 261 U. S. at 474, 67 L. Ed. 753, 43 S. Ct. 450.

"The present case differs of course, in the fact that a dealer who has entered into a requirements contract with Standard cannot consistently with that contract sell the petroleum products of a competitor of Standard's no matter how many pumps he has. . . ." (337 U. S. at 303; 93 L. Ed. at 1380.)

sales of the 337 and 3-C dealers "to make certain that no petroleum products or automotive accessories *except those* designated" by Richfield are sold, stored or handled by such dealers; and (c) by actual cancellation "in instances too numerous to be herein mentioned" of the written leases or sales agreements of dealers who refused to conform to the alleged oral agreements [Compl. par. 20; R. 7-8]. The complaint further charged that the contracts, written and oral, and Richfield's acts had the effect of preventing and eliminating the competition of Richfield's competitors for the trade of the dealer stations, and had the effect of depriving the dealer of the opportunity of buying petroleum products and automotive accessories from Richfield's competitors [Compl. par. 21; R. 8-9].

The government's proof fell far short of establishing any of such charges. It did not show any oral contract, agreement or understanding of exclusive dealing with *any* of the existing 1361 dealers of the 337 type or with *any* of the existing 261 dealers of the 3-C type; and the government showed only one instance, which occurred in 1941, which could be construed as an oral understanding of exclusive dealing with any former 337 or 3-C dealer. It did not show any pattern of coercive tactics on Richfield's part, as charged, or indeed any act or acts in the entire fourteen-year period of Richfield's existence which could be considered "coercive." The government did not show that all dealers or, in fact, any dealer handled exclusively either Richfield oil or grease or approved automotive accessories, or that Richfield's competitors, or any of them, were unable to sell their products to any of such dealers. The government did show that the 337 and 3-C dealers handled no competitor's gasoline during the time they handled Richfield's gasoline; but it

was also shown that in many instances a dealer discontinued entirely buying Richfield's gasoline and changed to another supplier prior to the expiration of his contract with Richfield. The government did not show that the practice of any dealer (except McRae in 1941) in thus confining himself to the gasoline of one supplier at a time resulted from any oral agreement or understanding to that effect or from any coercive act or acts by Richfield, or from anything other than the volition of the dealer.

While the District Court made findings of fact adverse to Richfield on all of the charges alleged in the complaint (excepting that of threats of cancellation of contracts), the government's case was so meager in its proof of most of the charges and so completely devoid of proof of the others that, at the very least, it may be said that there is no substantial evidence to support any of the findings. When the entire record, including the proof presented by Richfield, is considered, there can be little doubt that each of the findings is clearly erroneous under Rule 52(a), F. R. C. P.

The test of the validity of findings under Rule 52(a) is as follows:

> "A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed."
>
> *United States v. U. S. Gypsum Co.*, 333 U. S. 364, 395; 92 L. Ed. 746, 766 (1948).

The paucity of the government's proof pertaining to the dealers is revealed by the number and type of witnesses called by it. Although the record is long, the overwhelming bulk of the testimony pertains not to the dealer stations but to the L. O. stations. While the government

called as witnesses twenty-four L. O. operators to prove Richfield's control over them, a matter admitted in Richfield's pleadings, the government's proof pertaining to the 337 dealer stations was confined to the testimony of two dealers, even though Richfield had denied all of the government's charges concerning them. One of the two, McRae, had not been a dealer more recently than five years prior to the trial; and the incident to which he testified occurred in 1941, ten years prior to the trial. The other witness, Moore, had been a 3-C dealer from 1945 to 1951, at which time he signed a 337 deal; and his testimony does not support the government's charges. As to the 3-C stations, the government called four dealers; the same Moore and Colmery, Strable and Ogburn. Of these four witnesses, only Ogburn testified to any incident even remotely supporting the government's charges which occurred subsequent to the conversion of the 3-C contract from an "entire requirements" to a specific quantity basis.

Although the government called twenty-five witnesses who were salesmen for competitors selling lubricating oil and automotive accessories, twenty-two of them testified only concerning efforts to sell their products to L. O. operators and gave no testimony concerning efforts to sell to 337 or 3-C dealers. None of the other three witnesses (Ellis, Turner and Cleveland) testified to inability to sell their products to any 337 dealer. Of the three, Ellis alone testified of inability to sell to a 3-C dealer; and such inability occurred prior to the time that such dealer's contract was changed from the entire requirements basis.

The government called four former employees of Richfield in subordinate capacities (Nicholson, Cowan, Bradford and Scollard) who testified to matters pertaining to both the L. O. and dealer stations. The testimony of

Nicholson was limited to Seattle, Washington, prior to 1941, and to the State of Arizona from 1941 to 1946, and that of Cowan to activities in the City of Prescott, Arizona. The testimony of Scollard and Bradford to any matters subsequent to 1937 was confined to the City of Portland, Oregon. With the sole exception of Cowan, none of such witnesses testified to any matters more recent than 1946, five years prior to the trial. Cowan's connection with Richfield as a commission agent ended in 1948. The government also called as its witness, under Rule 43(b), W. G. King, Jr., Richfield's Vice President in charge of marketing, but his testimony refuted and did not support the government's charges.

The government also called two former bulk plant agents, Duarte and Jones, and three former TBA distributors, Gates, Pitts and Redding. Of these five witnesses, only Duarte gave testimony which supported the government's charges in any respect, and his testimony was limited to matters occurring in his area, San Lorenzo, California, during the period ending in October, 1945, over five years before the trial.

In considering whether the testimony of the government's witnesses can support an inference of a general pattern and policy on Richfield's part either to enter into or require oral exclusive dealing contracts, agreements or understandings with its dealers generally, or to coerce them into exclusive dealing in the manner alleged, attention should be given (as did the trial courts in *United States v. General Electric Co.*, 82 Fed. Supp. 753 (D. C. N.

J., 1949)[71] and *United States v. J. I. Case Co.*, 101 Fed. Supp. 856 (D. C. Minn., 1951)[72]), to the number of instances testified to when compared to the total number of dealerships and to the period of time involved. Similarly, attention should be given to the limited areas to which the government's testimony was confined as compared to the broad areas involved in Richfield's operations.

At the trial Richfield attempted to show by examination of James E. Daley, special agent of the FBI, how many

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[71]In *United States v. General Electric Co.* the Court said:

". . . the Government's offer is not impressive. A number of years are here involved. Chiefly S agencies are accused. There were many thousands of them and at best but relatively few accusations are made." (82 Fed. Supp. at p. 821.)

". . . on the merits of the charges, after giving cognizance to the Government's argument that isolated instances should be sufficient to characterize an entire system of dealing in matters of this kind, substantial weight cannot be accorded these charges. . . . At most the Government has shown that on the lower echelons of the organization the rules were sometimes regarded as onerous and susceptible of causing loss of business, but the Government's documents are replete with evidence that in the higher and supervisory brackets all reasonable care was taken that the agency form should be strictly adhered to. . . . Considering the scope of the operation few instances were brought to light." (82 Fed. Supp. at p. 824.)

[72]*United States v. J. I. Case Co.* was similarly a suit under Sherman Act Section 1 and Clayton Act Section 3 asserting that Case had made oral exclusive dealing agreements and had coerced dealers to exclusive dealing by tactics including refusal to enter into written contracts or to renew existing ones unless the dealer agreed to become an exclusive Case dealer. In holding that the government had failed in its burden of proof the District Court said:

"The untenability of plaintiff's position is that, while it has established some flagrant attempts to coerce and put pressure on a few dealers to give up competing lines as a condition for

of the present and former 337 and 3-C dealers had been interviewed by the government in preparation of its case, in order that a comparison (similar to that made in *United States v. J. I. Case Co., supra*) could be made; but the District Court refused to permit any inquiry into this subject matter. [R. 1771-3.]

The various findings attacked in the Assignments of Error are discussed in the following groups.

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obtaining a Case contract or to obtain a renewal of the Case contract, it seeks to deduce from such instances that every exclusive Case dealer constitutes evidence of a so-called pattern or policy on the part of Case to obtain an agreement or understanding from its dealers that they will not handle competitive lines." (101 Fed. Supp. 856, 864-5.)

The Court commented on the number of dealers' reports and interviews of dealers and former dealers which the government had investigated prior to trial, from which it selected the 108 dealers as to whom testimony was given. In this case the Court said:

"But the instances of apparent competitive restraint pertain to a relatively small number of dealers." (101 Fed. Supp. 856, 864.)

"Not only does the testimony regarding the 108 dealers fail to sustain the inferences which plaintiff seeks to draw, but it seems significant that, of the 108 instances, only 26 occurred after January 15, 1946, when normal conditions after the war began to be resumed in the farm machinery industry. Plaintiff's evidence discloses that there were 16 instances in the year 1946, 10 in 1947, and none in 1948. Moreover, there were only seven dealers out of the 3,738 Case dealers in the United States who were called to testify that any attempt had been made to convince them that they should drop competing lines during the years 1946 and 1947. And of these 3,738 dealers, some 2,600 were handling competing lines, either long or short. And in this connection, it should be remembered that the Government circulated all of these dealers by questionnaires as to Case's competitive restriction policy during the years in question. These circumstances tend to negative plaintiff's contention that Case is pursuing a pattern or policy of imposing competitive restrictions on its dealers." (101 Fed. Supp. 856, 865.)

1. Findings re Oral Agreements.[73]

The District Court not only found the existence of oral agreements as alleged in the Complaint, but in Finding 33 found the existence of an oral agreement with *each* of the 1361 dealers of the 337 type and with *each* of the 261 dealers of the 3-C type.

Certainly the findings of oral agreements or understandings of exclusive dealing with the 337 and 3-C dealers cannot be supported by the testimony of the dealer witnesses as to their negotiations with Richfield representatives. Only one instance of such nature, occurring in the fourteen years of Richfield's existence, was testified to by a person who had been a 337 dealer not more recently than 1946; and that instance occurred in December of 1941.[74] No instance of an oral exclusive dealing agreement or understanding was testified to by any 3-C dealer.[75] Nor do the findings receive any better support

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[73]The Findings re the existence of oral agreements are enumerated in Assignment of Error II(1)(a). [R. 205-6.]

[74]McRae was originally an L. O. operator in one of Richfield's stations from 1939 to 1941, the period Richfield held the master lease on the property. [R. 1224.] McRae obtained the master lease on the same station from the property owner and on December 2, 1941, signed a 337 sales contract and painting agreement with Richfield relating to such station. [R. 1224.]

McRae asked Richfield to paint the station and stated he would be willing to handle Richfield's products but that he wanted the station painted. [R. 1235.] The Richfield representatives told him that if he handled Richfield's products they would arrange to paint the station. [R. 1225.]

[75]Ogburn, who operated a 3-C station under an oral arrangement between him and one Mathis, the 3-C dealer, did testify that a Richfield representative was present when Ogburn made his oral deal with Mathis and said it was Richfield's policy not to have other oils "if possible" and that Ogburn and Mathis "agreed" to keep competitive oils out of sight. [R. 1357.] Nothing was said that Ogburn could not have competitive oils. [R. 1367.]

from the testimony of Richfield's former employees, agents or distributors as to their negotiations with the 337 and 3-C dealers. None of them testified to any instance of any conversation with any dealer which could form the basis of an oral exclusive dealing contract, agreement or understanding.[76]

W. G. King, Jr., Richfield's Vice President, testified unequivocally that there were no oral agreements and that excepting for the 3-C deals during the period from 1945 to August, 1948, no contract was made on an exclusive or entire requirements basis. (See Statement at page 24 and page 33 hereof.)

2. Findings re Inspection, Policing and Supervision.

Finding 29 [R. 154] is as follows:

> "29. Richfield inspects, polices, and supervises the activities and sales of the independent operator at the 2965 service stations to make certain that no petroleum products or automotive accessories except those designated by defendant were or are sold, featured, or handled by the independent operator at the service station operated by him."

Note that the finding is made to apply indiscriminately to both the L. O. stations and the dealer stations. If

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[76]The only possible exception is the testimony of branch manager Bradford to a discussion with 337 dealer Kawalski which occurred in Portland, Oregon prior to 1946.

Bradford testified:

> "Q. Did you tell him to get rid of the motor oil? A. Well, you don't tell those fellows to get rid of anything. You have to sell them.
>
> Q. Did you tell them that it had anything to do with his ability to get a paint job? A. I told him, yes, if he would program a little better on oils and batteries and TBA, we had no trouble, of course, with gasoline, why, I would go all out on the paint job." [R. 1060.]

limited to the L. O. stations, the finding would be true excepting, of course, its characterization of the L. O. operators as "independent." In so far as the finding pertains to the dealer stations (337 or 3-C), it is clearly erroneous and without any evidentiary support.

The testimony of the government's witnesses falls far short of a showing of any acts of inspection, policing or supervision which could be considered of a coercive nature as distinguished from proper sales efforts, and certainly far short of a showing of any pattern of coercion. The inadequacy of the government's proof to support the finding is apparent when examination is made of the testimony of all of the government's witnesses: dealers,[11]

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[11] *McRae* (337 and L. O.) testified to inspection and control, not as to his 337 station but only as to the Richfield L. O. station of which he was the L. O. operator. [R. 1236.]

Moore (3-C and 337) testified to requests by a Richfield representative to take down competitive signs and to discontinue handling certain competitive oils in 1946 or 1947 (when he was buying under a 3-C sales contract containing an entire requirements clause) but not thereafter. [R. 1016, 1024.]

Colmery (3-C) did not testify to any inspection or policing or request not to handle competitive oils or accessories or advertise them even during the period when his 3-C contract was on an entire requirements basis. He did testify to handling competitive products at that time. [R. 1199-1200.]

Strable (3-C)—no pertinent testimony.

Ogburn (3-C) testified a man named Froman inspected the station and signed a Form 205 which mentioned an unauthorized sign. [Ex. 22G; R. 316, 1359.] No one asked Ogburn to take the sign down, but Froman said that if Ogburn had the sign down he would have a clear record. [R. 1360.]

W. G. King, Jr., Richfield's vice president, testified that Froman was not a salesman but a "special retail representative" whose responsibilities are limited to visiting L. O. stations and inspecting the cleanliness of the premises and restrooms. If Froman did the acts testified to by Ogburn, it was outside his duties or authority. [R. 1709-11; Work Habits Special Retail Representatives; Ex. S; R. 491-2, 1711.]

former employees, agents and distributors of Richfield,[78]

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[78]*Nicholson,* assistant division manager for Arizona from 1941 to 1946, testified to instructions to L. O. operators. [R. 700-1.] He stated that he spoke only of L. O. stations, not independent stations. [R. 705.] On direct examination by the government he said: "There is a difference between the independent operator and leased out station . . . Of course, we encourage our L. O. operators to handle all of our approved accessories. The independent operators could generally do as they pleased." [R. 702.]

Cowan, who was a district salesman in Arizona from 1941 to 1945, and a commission agent in that state from 1945 to 1948, testified that he "could not assert any control over the dealer who might have been contracted with under the 337" [R. 711], that "it was really an impossibility to tell him what to do, so we appealed to his sense of good judgment" to use Richfield products and to "police the place" [R. 715]; and there was nothing Cowan could do about the failure of a dealer to do these things. [R. 715.]

Bradford, the Portland Branch Manager from 1941 to 1946, took pictures of dealer stations at the time he sent in requisitions for painting such stations. [R. 1058.] On some occasions he asked the dealer to remove competitive products in order to get a painting agreement. [R. 1058.] (Bradford's testimony on cross-examination denied this. [R. 1086.]) When the dealer took down the signs, Bradford did not insist on the dealer's agreeing to take out all competitive products and the dealer continued to sell competitive products if he felt so inclined. [R. 1086.] ". . . there was no instruction as far as permitting the man that owns that station to not put up a sign. I didn't have anything to say as to what he would put up or what he couldn't do. It was my job to sell him on the idea to take these things down, and if I couldn't do that, why, he kept on handling the product. But at the time the paint requisitions went in, why, I never had any trouble with the dealers, for them to take the signs down long enough for me to take a photograph, at least." [R. 1062-3.] When the competitive oil salesmen come around the signs went up again. [R. 1092.] Bradford never refused to take on a 337 account who said that he wanted to handle competitive oils or competitive TBA. [R. 1088.]

Bradford testified that there was a difference in dealing with the L. O. operators and the independent dealers. The dealer accounts were handled by salesmen and the L. O.'s by merchandisers. [R. 1100.] If an L. O. operator did not conform to handling Richfield approved automotive accessories, he was eventually checked out. [R. 1073.] As to the dealer stations, "We all knew we had to sell that to the dealer account." [R. 1072.]

Bradford held meetings every morning with the salesmen and merchandisers. [R. 1067-8.] As a result of these discussions,

Bradford identified various L. O. operators who were checked out [R. 1073-7]; but he did not testify to any cessation of deliveries to or termination of the sales contract of any independent dealer resulting from the handling or display of competitive merchandise.

Scollard, salesman at Portland in 1945-1946, testified that he removed signs from two dealer stations in 1946. [R. 1137-8.] Both of these signs so removed belonged to Richfield and the dealer had pasted competitor's signs over them. [R. 1143-4.] Scollard attended the meetings presided over by Bradford, the branch manager, and which were attended by both salesmen and merchandisers. [R. 1137.] He testified that merchandisers had nothing to do with the dealer stations; and salesmen had nothing to do with the L. O. stations. [R. 1142.] He testified that Bradford explained the policy to be that "Richfield service stations" were to handle nothing but approved merchandise. [R. 1138.] It is clear from Bradford's testimony [R. 1073], and from Scollard's testimony [R. 1139-41], that Bradford's statement concerning policy related only to L. O. stations.

Duarte was not an employee of Richfield but was a commission bulk plant agent and TBA distributor in San Lorenzo, California, from September, 1938, to October, 1945. Duarte's testimony with reference to inspection, policing and supervision pertained only to the L. O. stations. His testimony must be analyzed with care, however, because of his indiscriminate use, while testifying, of the word "dealer" to refer to independent dealers and to L. O. operators. Nevertheless, Duarte knew the difference between an L. O. station and an independent dealer station and gave a vivid description of the distinction. He said: "As far as I understand it, an L-O unit is a leased out Richfield station, and an independent station is that a dealer owns his building, his pumps, and the property. He is an independent dealer. An L-O unit, as far as I was concerned, was leased from a property owner, where Richfield wrote a long contract and, then, in turn, leased to a dealer [*sic*], but Richfield held the main lease on it for 10 years, 20 years, whatever it was." [R. 728.] He said further: "(the dealer) owned the station and he owned the property, and he was in business for himself. Richfield's L. O. units, they worked for Richfield." [R. 731.] (Duarte's testimony concerning painting agreements is discussed in Footnote 81 hereinafter.)

Jones was a commission agent in Hawthorne and Santa Monica for Richfield in 1944 and was later a TBA distributor in a different

and salesmen for competitors.[79]

King denied any effort by Richfield to control operations of 3-C or 337 dealers. [R. 663, 1634-5, 1687-8.] He described the sales efforts of the salesmen who con-

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area from 1945 to 1949. He did not testify to any matters pertaining to inspection, policing or supervision of dealer stations. As TBA distributor he was confined to selling authorized accessories [R. 736-7]; he tried to sell products to everybody he could [R. 736-7]; if the operator of an L. O. station was handling competitive TBA, Jones discussed the matter with Richfield's merchandiser and it would be up to the merchandiser to handle it from there on—Jones couldn't do anything about it. [R. 740.] Jones knew the difference between an L. O. station and an independent dealer station; the merchandisers have contact only with L. O. stations and not independent stations. All of his conversations with merchandisers re TBA related only to L. O. stations. [R. 744-5.]

Gates (former TBA distributor) was required to submit reports to Richfield of his sales of TBA. [R. 1156.] He discussed TBA sales at morning meetings in Portland, conducted by Bradford. [R. 1156.] Bradford discussed the twenty-four hour termination clause and said he was going to put over the TBA program "if he had to check out every operator in the City of Portland." [R. 1157.] This statement referred only to L. O. operators. [R. 1173.] 80% of Gates' sales were to stations which did not handle Richfield products. If he was unsuccessful in selling to stations handling Richfield products he made no effort to instruct them or tell them they had to buy or they would be dispossessed, but merely fulfilled the capacity of a salesman. [R. 1172.]

Pitts (former TBA distributor), gave no pertinent testimony. [R. 993-8.]

Redding (former TBA distributor in San Diego from 1946 to 1948), did not testify to any matters pertinent to inspection, policing or supervision. [R. 681-94.]

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[79]Twenty-two of the twenty-five competitor witnesses testified only concerning L. O. stations. The other three competitor witnesses, Ellis, Turner and Cleveland, did not testify to any matters which could be characterized as supervision, policing or inspection of dealer stations, either 337 or 3-C.

tacted the independent dealers and emphasized the latters' freedom of choice.[80]

3. Findings re Cancellation of Contracts.

Although the complaint alleged that Richfield has required the dealers to adhere to exclusive dealing contracts by threats, both express and implied, that it will cancel the sales contract or lease [Compl. par. 20; R. 7-8], there is no testimony of any such threat of cancellation to any 337 or 3-C dealer.[81] The District Court made no finding that any such threat occurred.

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[80]On examination by the government, King testified, ". . . it would be only natural that if he [the salesman] finds that the dealer is buying competitive products, he is going to endeavor to sell them on the merits of our products. . . . it is quite possible in calling on the account he is going to take stock of what the competitors are able to sell him and endeavor to displace those products, if he can, through interesting him in the merits of our products. . . . Well, we should be delighted if the dealer would see fit to handle our products entirely. Naturally, that is the objective of our salesmen from the sales standpoint, but certainly it is entirely up to the dealer to do so. In other words, the dealer, he is the last word in that respect as to whether or not he is going to buy our products or somebody else's products." [R. 1688.]

King testified further that Richfield does not solicit the business of a dealer on the basis of any agreement or understanding that he buy all of his requirements of gasoline or other petroleum products from Richfield; and the instructions concerning the manner of fixing the quantities to be inserted in contracts result in the dealer's not being permitted to obligate himself to buy his entire requirements. [R. 1620-21, 1627, 1638, 1644, 1707-8.]

[81]*Duarte*, the former commission agent and TBA distributor (until 1945), was the only witness other than King whose testimony even mentioned cancellation of dealers' contracts.

Duarte testified with respect to independent dealers, "If they didn't do it the way Richfield wanted them to, they would cancel out the lease. . . . They would cancel out his paint contract and he would be all through buying Richfield products . . . in that particular station." [R. 731-2.] However, Duarte gave no instance of any such cancellation and the only instance he gave

Likewise the District Court made no finding of the cancellation of contracts by Richfield because of the handling by the independent dealers of competitive oils or greases or non-approved automotive accessories or because of the display or advertising by the independent dealers of any of such competitive products; nor was there any testimony whatsoever of any such cancellation.

The only finding pertaining to the cancellation of contracts is contained in Finding 28[82] which deals with Rich-

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concerning even a threat of cancellation was a request to Duarte by a Richfield salesman to contact dealer Koenen "to see that he got rid of his competitive oil, that Richfield Oil Company had painted his unit, and if he did not get rid of it they would cancel his lease." Duarte did not testify to having told Koenen of the suggested cancellation. [R. 724.]

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[82]"28. Beginning in or about June 1938, with the purpose and intent of further effectuating and enforcing the exclusive dealing provisions of the written and oral contracts between Richfield and the independent operators of the L-O, 3-C dealer, and 337 dealer service stations, Richfield adopted the policy of refusing to sell gasoline to the independent operator of any service station handling or selling gasoline competitive to Richfield gasoline. Pursuant to this policy Richfield withdrew from all split pump accounts and refused to sell gasoline to any independent operator of the L-O, 3-C dealer, and 337 dealer stations except on the oral condition, understanding, and agreement that the independent operator purchase all of his requirements of gasoline from Richfield. Richfield has not, in fact, since said time sold or supplied gasoline to any independent operator who has not in fact purchased all of his gasoline requirements from Richfield regardless of the provisions of any written sales contract with said independent operator. When the independent operator wished to operate his station as a split pump station, Richfield terminated all supply arrangements with such operators. Said policy has had the effect, as intended by Richfield, of preventing the independent operator of an L-O, 3-C dealer, or 337 dealer station from handling or selling gasoline competitive to Richfield at said stations and of preventing the operator of the 3-C or 337 dealer stations from purchasing any quantities of gasoline above the specified minimums designated in the written forms of sales contracts (plaintiff's exhibits 3B, 4C, 5, 5B, 5D and 5G), from any manufacturer or supplier of gasoline other than Richfield." [R. 154.]

field's "policy" concerning split pump accounts. Since the finding is true in part, its error, though pervasive, is subtle. The truth is limited to the fact that in June, 1938, Richfield instructed its Division Managers to discontinue all split pump resale accounts [Ex. 9, R. 284, 658], pursuant to which instructions Richfield withdrew from some forty or fifty split pump accounts which it then had, but without any public announcement to the trade in connection with such withdrawal. [R. 1635-6.] A split pump station is one which handles in different pumps and at the same time the gasoline of more than one supplier.

The remainder of Finding 28 is clearly erroneous. Particularly is it erroneous in its implication that either the policy or purpose evidenced by the June, 1938 letter or any of the acts taken in pursuance thereof continued to the time of trial or to a time reasonably proximate thereto. Each of the several findings in Finding 28 which follows the reference to the June, 1938 letter can thus be demonstrated to be clearly erroneous:

(a) The finding states: "Pursuant to this policy Richfield withdrew from all split pump accounts and refused to sell gasoline to any independent operator of the L-O, 3-C dealer, and 337 dealer stations except on the oral condition, understanding, and agreement that the independent operator purchase all of his requirements of gasoline from Richfield."

The only evidence in the entire record of split-pump accounts from which Richfield withdrew is that pertaining to the forty or fifty split-pump accounts from which Richfield withdrew in 1938. There is no testimony or evidence whatsoever of Richfield's withdrawal from any split-pump account during a period of twelve years preceding the

trial in 1951; and with the sole exception of the McRae incident in 1941, there is no testimony or evidence that during such twelve-year period Richfield refused to sell gasoline to any dealer who desired to purchase the same from Richfield on a split-pump basis. All of the testimony in the entire record pertaining to split-pump operations or the withdrawal from split-pump accounts, is referred to in the accompanying footnote.[83]

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[83](a) *Dealers:*

McRae (337 and L. O.). Within thirty days from the time McRae "signed the lease with Richfield," he told two Richfield employees that he wanted to handle two types of gasoline, Standard and Richfield; and was told by them that he would have to handle either Richfield or Standard. [R. 1226.]

In referring to the time he "signed the lease with Richfield," McRae did not identify whether he meant the L. O. lease on the station made with Richfield in 1939 [R. 1224] or the 337 sales contract and painting agreement dated December 2, 1941, made with Richfield within two weeks from the time McRae obtained the master lease on the same station from the property owner. [R. 1224-5.]

Moore, Colmery, Strable and *Ogburn*—no pertinent testimony.

(b) *Former Employees, Agents and Distributors:*

S. L. Nicholson (assistant manager Arizona until 1946), testified that during the time he was in Arizona he thought Richfield's policy to be that of not having split-pumps. He did not testify that Richfield ceased delivery to any dealer who went split-pump. Conversely, he testified to two instances in 1941 when dealers solicited Richfield for gasoline for less than the entire number of pumps in the station and Richfield "took on the account." He said these two accounts were later converted to a "100% account," but did not state that any coercive tactics brought about such result. [R. 704-5.]

E. J. Bradford (district supervisor in Oregon, Washington and Idaho in 1937 and branch manager in Portland from 1937 to 1946), testified: In 1937 the "entire effort" was that the stations be on a 100% basis. [R. 1039.] While in Portland his instructions were that *3-C dealers* had to be 100%. [R. 1047.] (This testimony pertained to a time when the 3-C sales contracts provided for the dealers' "entire requirements.") In negotiating a 337 contract, "the quantity would depend on what he (the

(b) Finding 28 states further: "When the independent operator wished to operate his station as a split pump station, Richfield terminated all supply arrangements with such operators."

This finding has no support whatsoever in the record as to any matter or fact occurring after 1938. In the subsequent twelve years before the trial, with the exception of the McRae incident, no 337 or 3-C dealer has ever as much as indicated to Richfield a desire to operate his station as a split-pump station; and Richfield has not terminated its supply arrangement with any dealer because of the existence of a split-pump operation or "wish" by the dealer to so operate.

(c) Next follows the specious portion of Finding 28 that "Richfield has not, in fact, since said time [1938] sold or supplied gasoline to any independent operator who has not, in fact, purchased all of his gasoline requirements from Richfield regardless of the provisions of any written sales contract with said independent operator."

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dealer) could sell. We would approach the 100% basis as near as we could." [R. 1088.] Richfield "lost accounts right and left"; but not while Bradford was branch manager in Portland did an independent account with whom Richfield had a contract to sell gasoline displace Richfield gasoline in less than all of the pumps. [R. 1091-2.]

Scollard and *Green* (salesmen), *Duarte* and *Jones* (bulk plant commission agents), *Gates, Pitts* and *Redding* (TBA distributors)—no pertinent testimony.

(c) *Current Richfield Representative:*

The testimony concerning split-pumps of *W. G. King, Jr.*, Richfield's vice president in charge of marketing, is summarized in the Statement on pages 26 to 28 of this Brief and will not be repeated here.

(d) *Competitor Witnesses:*

No pertinent testimony.

The reference to "since said time" is intended to be the connecting link between the June, 1938 letter and the trial in 1951. Such statement above quoted, true in itself, is nevertheless false in its implication that it proves or supports (1) the remaining portion of Finding 28 that "the policy has had the effect, as intended by Richfield, of preventing the independent operator of an L.O., 3-C dealer, or 337 dealer station from handling or selling gasoline competitive to Richfield at said stations";[84] and (2) that the "policy" enunciated by the 1938 letter continued from 1938 to the time of the trial.

Neither of such implications can be supported by the record.

First. It is true that while a majority of the 337 and 3-C dealers freely handled, displayed and sold competitive oils and automotive accessories, none of such stations were split pump in the sense that any of them handled competitive gasoline at the same time it was buying gasoline from Richfield. [R. 1639, 1678.]

But there is no showing whatsoever that even this limited confinement by the dealers to the handling of Richfield gasoline resulted from Richfield's "preventing" them from handling other gasoline. On the contrary it appears from the entire evidence that the action of the dealers in limiting themselves to the gasoline of one supplier at a time was purely voluntary on their part and did not result from any actions of Richfield, coercive or otherwise. None of the government dealer witnesses, except McRae, testified of a desire to become split pump; and no competitor selling gasoline was even called by the govern-

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[84]Here is another instance of indiscriminate grouping together of the L. O. and dealer stations, regardless of the radically different testimony relating to each.

ment as a witness. The evidence is uncontradicted that the overwhelming majority (in excess of 98%) of present day service station dealers prefer to handle at one time the products of a single supplier [R. 1636-9]; that consistent with such desire, when a dealer wanted to handle a different gasoline, he completely discontinued handling Richfield gasoline and replaced it entirely with a competitor's gasoline, whether the dealer's written contract had expired or was still in existence [R. 1626-7, 1631, 1639, 1676-8]; that of the dealer accounts lost by Richfield, approximately 80% were lost prior to the expiration of the sales contract. [Ex. X; R. 515, 1762.] This appears to be the situation envisioned by the following portion of the *Standard Oil Company* decision:

> "If in fact it is economically desirable for service stations to confine themselves to the sale of the petroleum products of a single supplier, they will continue to do so though not bound by contract, * * *." (337 U. S. at 313, 314; 93 L. Ed. at 1386.)

The fallacy in the District Court's finding is in its assumption that because Richfield ceased selling gasoline to certain dealers in 1938, other dealers who bought gasoline from Richfield during the succeeding twelve-year period were "prevented" or "coerced" from buying competitive gasolines.[85] Not only was there no showing of any coercive acts to compel the dealers to buy Richfield gaso-

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[85]A similar fallacy was discussed in *United States v. J. I. Case Co.*, 101 Fed. Supp. 856, 864-5 (D. C. Minn., 1951); where there was present the culpable aspect, not here involved, of current coercive practices by the defendant against certain dealers to require them to give up competing lines as a condition to obtaining a supply contract or renewing an existing one. See Footnote 72 hereinabove.

line during the period 1939 to 1951; but there was not even a showing that the dealers who did buy gasoline from Richfield during the intervening twelve-year period before the trial had ever heard of the policy expressed in the June, 1938 letter or had any knowledge of Richfield's withdrawal from the 40 to 50 accounts in 1938. Note that Richfield's withdrawal from those accounts at that time was without any public announcement to the trade. [R. 1635-6.][86]

Second. There is no showing, as implied in Finding 28, that there continued from 1938 to the time of trial the "policy" of the 1938 letter withdrawing from split pump accounts. The government did not show any instance of a withdrawal occurring after 1938. Richfield's showing, while not of a positive rescission of such 1938

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[86]If it be assumed *arguendo* that such withdrawal in 1938 could be deemed coercive as to those 40 to 50 affected accounts, the same could not conceivably be deemed coercive as to other dealers who did not have knowledge thereof.

Compare these facts with the situation in *Carter Carburetor Corporation v. Federal Trade Commission*, 112 F. 2d 722, 726 (C. C. A. 8, 1940), where the defendant mailed to all of its distributors and service stations a general bulletin notifying them that if they took on a new carburetor line, Carter's preferential discount, service information and contract would be discontinued. The Circuit Court said:

> "It was made perfectly clear to all service stations that their preferential discount would be available only on condition that they did not carry or take on a new competing line. Under these circumstances it is immaterial that those who handled petitioner's products were not obliged to affirmatively promise in express terms not to handle goods of Carter's competitors. The condition against handling the goods of competitors was made as fully effective as though it had been written in and affirmatively agreed to in express terms in the contracts." (112 F. 2d 722, 732.)

policy, was that the 1938 instructions became meaningless due to the change in buying practices of the independent dealers. See Statement, pages 26 to 28 hereinabove.

Richfield readily acknowledged a current policy of an entirely different nature, not of the withdrawal from split pump accounts, but of a determination not to *solicit* the business of *those particular dealers* who operate the less than 2% of all service stations operating on a split pump basis. Richfield's reason for such selectivity in its solicitation included the fact that split pump stations are not deemed by it desirable for its business because of their facilities, type of service and manner of operation. [R. 655, 1638.] Solicitation of business on this basis is a wholly valid exercise of Richfield's right to the selection of its customers.[87] It does not involve any coercive practices whatsoever. Such manner of selection of customers is not in any sense inconsistent with the fact that the business which is sought by Richfield is solicited on a specified quantity and not on an entire requirements basis. [R. 1620, 1627, 1638, 1644.]

Accordingly, the concluding portion of Finding 28 to the effect that the dealers have been *prevented* from handling or selling gasoline competitive to Richfield or from purchasing from competitors of Richfield quantities of gasoline above the specified minimums designated in their written sales contracts is also clearly erroneous.

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[87]15 U. S. C. A., Section 13 (Section 2 of the Clayton Act), provides, in part:

> "That nothing contained in sections 12, 13, 14-21, and 22-27 of this title shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade: . . ."

4. Findings re Painting Agreements.

Finding 26 relating to painting agreements is clearly erroneous in many respects. The finding states, in part, "The purpose and intended effect of the painting agreement is to secure an exclusive Richfield outlet, * * *." The evidence does not support this finding either as to purpose or effect. Both Bradford, the government witness, and King, Richfield's Vice President, testified that the painting of service stations is a practice which has been developed by competition; that various companies paint the dealers' stations in their identifying colors, and that the dealers desire to have their stations painted for advertising value and for the preservation of their stations. In order to obtain the business of independent dealers, it was necessary for Richfield to meet competition and similarly paint stations. [Bradford, R. 1083-4; King, R. 1622.] Richfield's reason for the provision in the painting agreement providing for reimbursement for painting expenses under said conditions was explained by King as follows: The average cost of painting a station runs from $500 or $600 to as high as $1,200 or $1,500. "In the event the dealer should break his contract to purchase the fixed quantity of gasoline that he has agreed to, or, in other words, if he stops buying our gasoline this contract gives us the right to collect for the cost of the paint job." If the dealer fulfills his contract to purchase the fixed quantity, "we consider our paint costs have been amortized." [R. 1624-5.]

The entire record contains testimony of only three instances which occurred during the entire fourteen-year period of Richfield's existence of the use of painting or of painting agreements in connection with purchases by an independent dealer of Richfield petroleum products

either exclusively or in greater quantities than his prior purchases; and all of these instances occurred prior to 1946.[88]

That is the sum total of the testimony to support the finding that "no painting agreement is entered into by Richfield except upon the oral understanding that the independent operator of the 337 dealer service station will purchase his entire requirements of petroleum products and automotive accessories from or through Richfield." [R. 153.]

Finding 26 also states that the obligation of the dealer to pay for the cost of painting in the event the sales contract is terminated by him prior to the expiration of its term was intended to and had the effect of compelling the dealer to purchase all of his requirements of petroleum products and automotive accessories from or through Richfield. This is contrary to the undisputed evidence. Some 75% of the dealers handle and display competitive oils and accessories [R. 1706-7] and the government did not prove the identity of one dealer who handled Richfield products exclusively. Proof that the existence of a painting agreement with a dealer did not have the effect of compelling his continued purchase of gasoline from Richfield is found in the undisputed fact that of 407 dealer accounts lost by Richfield prior to the expiration of the dealers' contracts, the dealers of 303 of them (representing 74% of the total) did have paint-

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[88]McRae, see Footnote 74.

Bradford testified concerning the Kawalski incident. See Footnote 76. See also Footnote 78.

Duarte testified concerning the Koenen incident. See Footnote 81.

ing agreements in effect providing for their repayment to Richfield of the cost of painting because of such discontinuance. [Ex. X; R. 515, 1762.] Furthermore, Richfield did not enter into a painting agreement with each of the 337 dealers at the time it made a sales contract with him. Of the 1361 sales contracts in effect with 337 dealers as of December 31, 1950, only 853 of them were made concurrently with painting agreements. [R. 1621-2; Ex. 26-A, R. 335-6, 1540.]

5. Findings re Effect on Competitors.

The Court found that the "oral" and written sales contracts and painting agreements and 3-C leases had the effect of shutting out all competition for the petroleum products and automotive accessories business of the 337 and 3-C dealers and denied to manufacturers and suppliers of competitive products access thereto. [Findings 26, 45 and 46; R. 153, 161, 162.] There is no evidentiary support for these findings. All but three of the twenty-five competitor witnesses called by the government testified solely of their inability to sell or difficulties in the sale of their products to L. O. operators and did not testify even to efforts to sell to independent dealers. The testimony of the other three competitor witnesses does not support the finding.[89] No competitor selling gasoline was even called as a witness.

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[89] *Ellis*, the Penzoil salesman, testified of efforts to sell L. O. operators. The only non-L. O. operator to whom he attempted to sell was Colmery, a 3-C dealer, and Ellis' efforts to sell to Colmery were during the time when Colmery had "an entire requirements" form of 3-C contract which Colmery refused to change until Richfield gave him a thirty-day termination privilege. [R. 933-4, 942-4,

That is all the testimony there is in the entire record concerning the effect on competitors of Richfield's contracts or practices with 337 and 3-C dealers.

6. Findings re Effect on Dealers.

The District Court found that the "oral" and written agreements prevented the 337 and 3-C dealers from dealing with competitive suppliers and denied such dealers access to competitive products. [Findings 39, 47 and 48; R. 158, 162-3.] There is no evidentiary support for these findings insofar as they pertain to any of the 337 or 3-C stations. All evidence which bears upon this matter has been discussed hereinabove.

The portion of the District Court's Opinion relating to the dealer stations contains many purported statements of fact some of which are without evidentiary support and are contrary to the evidence. Others can only be supported by a misapplication to the dealer stations of testimony

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963-4, 1199-1200.] Ellis also testified that if he did sell to Richfield accounts, it was on a "basis of a hidden capacity, no display, no signs and what have you, if I did make a sale." [R. 963.] This testimony of no display of Penzoil signs in Ellis' sales territory was refuted by photographs taken at the time of the trial of 337 and 3-C stations, located in Ellis' territory. [R. 928, 1783-6.] [Ex. AD, R. 521-34, 1785.]

Turner. The only non-L. O. station referred to by Turner was a 3-C station run by Mrs. Johnson. Turner talked to Mrs. Johnson about purchasing Christiansen Oil Co.'s products and she said that she *would continue* to buy. [R. 1504.]

Cleveland, another salesman for Christiansen Oil Company, testified that Ogburn (in a 3-C station) did not display Christiansen's products but that he did purchase them. [R. 1491-3.]

which patently related only to the L. O. stations and their operators. Illustrative are the following:

(a) The Opinion, in referring to the painting agreement, states: "And Richfield retains the right to cause the removal of any signs placed in violation of this clause." [R. 91.] There is no provision in any of the successive forms of painting agreements [Exs. 5-A, 5-C, 5-E and 5-F; R. 269, 271, 274-5, 567] giving Richfield any such right; nor is there any evidence that Richfield removed from any independent stations any signs other than those belonging to and furnished by it. [R. 1143-4.]

(b) The Opinion states: "The painting agreement is obviously intended to secure an exclusive outlet under the guise of a painting agreement. . . . [It] could have but *one object,—i. e.,* to shut out all competition. And, in reality, that was *the effect* of the arrangement." (Emphasis by Court.) [R. 91-2.] If anything is clear from the evidence in this case, it is that in reality the painting agreement did not shut out any competition at all. There was undisputed proof that 75% of all dealers handled and displayed competitive products other than gasoline. If competitors for the sale of gasoline were locked out or foreclosed from competition, one might well imagine that the government, having called twenty-five competitor witnesses who testified to other products in relation to the L. O. stations, could have produced one competitor witness to testify as to gasoline in relation to the dealer stations.

(c) The Opinion states with reference to the original split-pump policy of 1938: "And it is quite evident that in one form or another, the policy has been enforced, and that the moment gasoline of another concern was handled by any of the operators on these leases,—as one of their

own witnesses put it,—Richfield 'was no longer interested in the station,' and terminated their relationship." [R. 92.] No witness so testified.[90]

Further, the statement above quoted is unwarranted by anything in the record. There is no evidence of any instance since 1938 of any termination by Richfield of its "relationship" with any dealer until after he had completely discontinued handling Richfield gasoline.

(d) The Opinion states: "In truth, there is evidence that the policy of the Company was that if 'any dealer' refused to interest himself in Richfield sponsored TBA products, 'then it's a new dealer,'—*i. e.*, the instructions were to cancel the arrangement, whatever it was." [R. 92-3.] In the entire record, there is no testimony of such nature relating to any 337 and 3-C dealer. This statement of the Court appears to be a misapplication of testimony given by the government witness Duarte, who used the word "dealer" indiscriminately to refer both to an independent dealer and an L. O. operator. (See Footnote 78 hereinabove) Such statement of Duarte's was: "We were supposed to deliver the products to the Richfield dealer and if he didn't want to buy these products we were

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[90]The aforesaid language appears to be a paraphrase of the Court's own statement to counsel during the course of the trial: "On the other hand, you can argue from the same facts that that ceased, *that you simply were not interested for reasons of your own in split-pump accounts and abandoned them,* and what they did afterwards should be determined upon an independent basis." (Emphasis supplied.) [R. 1552.]

to put in a new dealer that would. That was their policy." [R. 721.] But it is beyond cavil that in such statement Duarte referred not to independent dealers but only to the operators of L. O. stations. He knew the difference between an L. O. station and an independent station.[91] Immediately preceding his testimony above quoted, Duarte said: "As far as I can remember we were told to sell all Richfield outlets, but mostly the Richfield Company units; that we couldn't make any independent dealer, which he owned his own station and pumps, buy the tires, batteries and accessories because he didn't have to, . . ." [R. 721.] "That the Company units were the ones that Richfield really wanted to buy TBA, and they had to buy it." [R. 721.]

Finally, the Opinion states that these instruments ". . . in effect, are *requirement* contracts, although not so denominated, . . ." (Emphasis by Court.) [R. 93.]

The District Court's decision, unless disavowed, appears to establish the law that a sales contract providing for a

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[91]Duarte said: "As far as I understand it, an L-O unit is a leased out Richfield station, and an independent station is that a dealer owns his building, his pumps, and the property. He is an independent dealer. An L-O unit, as far as I was concerned, was leased from a property owner, where Richfield wrote a long contract and, then, in turn, leased to a dealer, but Richfield held the main lease on it for 10 years, 20 years, whatever it was." [R. 728.]

He said further: "That is the difference, independent. He owned the station and he owned the property, and he was in business for himself. Richfield's L-O units, they worked for Richfield." [R. 731.]

specified quantity of products substantially less than the purchaser's anticipated requirements is an illegal "exclusive dealing" contract when used, on occasion, in connection with a collateral agreement under which the purchaser, who has received without charge the painting of his place of business, agrees to repay to the seller the cost of such painting in the event the purchaser fails to purchase the specified quantity. The District Court's decision would likewise declare such a sales contract to be an illegal "exclusive dealing" contract when used in connection with a lease by the dealer to the supplier and a sublease back to the dealer under which instruments the supplier has the right to retain the lease and terminate the sublease and sales contract if the dealer fails to purchase the specified quantity agreed to. We submit that such an interpretation of the anti-trust laws cannot reasonably be justified.

Giving the greatest weight to all of the testimony of the government's witnesses concerning Richfield's relationships to the dealer stations, none of the acts of Richfield's representatives can be considered to be coercive in any respect or considered other than legitimate efforts at persuasive salesmanship of the nature approved in *Ford Motor Co. v. United States,* 335 U. S. 303, 316, 318; 93 L. Ed. 24, 35, 36 (1948).

B. If It Be Determined on This Appeal That Richfield's Arrangements With the 337 Dealers or With the 3-C Dealers Could Be Deemed to Be Exclusive Dealing or Requirements Contracts, Nevertheless There Are No Facts Found by the District Court Upon Which It Could Properly Base Its Conclusion That the Contracts Are Unreasonable Under Section 1 of the Sherman Act or That the Requirements of the Qualifying Clause of Section 3 of the Clayton Act Have Been Met.

SHERMAN ACT, SECTION 1.

If it could be determined that Richfield's contracts with the 337 and 3-C dealers are requirements contracts in the view thereof taken by the District Court in its Opinion [R. 93], such contracts, nevertheless, may not be determined to be unreasonable restraints of trade under Section 1 of the Sherman Act in the absence of findings supported by facts relevant to the various tests and factors which must be examined in the application of the rule of reason.

All of the discussion concerning the determination of unreasonableness of restraints under Section 1 of the Sherman Act contained on pages 94 to 104 of this Brief in Part I-B is equally applicable here and will not be repeated.

The government submitted no proof of the various factors there enumerated which are relevant to the problem of unreasonableness. The District Court determined illegality under Section 1 of the Sherman Act without proof by the government that any competitor was unable to sell products to any 337 or 3-C dealer. Particularly absent was proof under the doctrine of *United States v. Columbia Steel Co.*, 334 U. S. 495, 524; 92 L. Ed. 1533,

1552 (1948) that Richfield's activities had the effect of unreasonably restricting the opportunities of Richfield's competitors to market their products. The District Court denied Richfield's motion that it make findings of those material facts enumerated in Richfield's Assignments of Error II, 3(e) to 3(p), inclusive [R. 211-2], all of which proposed findings are supported by uncontradicted evidence, and which, if made, would require the conclusion that there has been no unreasonable restraint of trade even if Richfield's contracts with the 337 and 3-C dealers could be deemed to be exclusive dealing or requirements contracts.

CLAYTON ACT, SECTION 3.

Under the rule of *Standard Oil Company of California v. United States,* 337 U. S. 293, 313, 314; 93 L. Ed. 1371, 1385-6 (1949), no showing of substantiality has been made as to the 337 or the 3-C stations.

The 337 Stations: For the year 1950 the gasoline sold by Richfield to the 337 stations constituted 1.14% of the total gasoline manufactured and available for sale in the Western area [Ex. Z; R. 517, 1768]; and constituted 1.33% of the volume of taxable sales of motor vehicle fuel by all companies in the area [Ex. M-5; R. 437-40, 1559]; and constituted 2.03% of the total volume sold by all companies to all stations. For the year 1948, the 337 stations constituted 3.08% of the total service stations in the area. [Ex. M-4; R. 432-6, 1557.]

The 3-C Stations: For the year 1950 the gasoline sold by Richfield to the 3-C stations constituted 0.34% of the total gasoline manufactured and available for sale in the Western area [Ex. Z; R. 517, 1768]; and constituted

0.40% of the volume of taxable sales of motor vehicle fuel by all companies in the area [Ex. M-5; R. 437-40, 1559]; and constituted 0.63% of the total volume sold by all companies to all stations. For the year 1948, the 3-C stations constituted 0.70% of the total service stations in the area. [Ex. M-4; R. 432-6, 1557.]

The affected share or proportion of the line of commerce is not substantial. (*B. S. Pearsall Butter Co. v. Federal Trade Commission*, 292 Fed. 720 (C. C. A. 7, 1923).)

Conclusion.

As to the L. O. stations, there is no dispute of fact. We respectfully submit that the relationship of Richfield to the L. O. operators is such that the restriction against exclusive dealing is not cognizable under either the Clayton or Sherman Act. Even if the relationship were not such, nevertheless the facts here presented fail to show either unreasonableness under Section 1 of the Sherman Act or proof sufficient to meet the requisites of the qualifying clause of Section 3 of the Clayton Act.

Richfield's contracts with the dealer stations are not exclusive dealing or requirement contracts but are contracts for the sale of specified quantities of petroleum products substantially less than the dealers' anticipated requirements, and thus are not unlawful restraints under Section 1 of the Sherman Act nor are they within the class of contracts affected by Section 3 of the Clayton Act.

All findings of oral contracts, agreements or understandings of exclusive dealing in Richfield's petroleum products or approved accessories and of a pattern of coercive practices on Richfield's part to require exclusive dealing agreements are clearly erroneous under Rule 52(a), F. R. C. P.

We respectfully submit that we have sustained each and every Assignment of Error and that the judgment appealed from should be reversed as to both types of stations.

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In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 395

RICHFIELD OIL CORPORATION, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the District Court for the Southern District of California, Central Division (R. 71), is reported in 99 F. Supp. 280.

JURISDICTION

The judgment of the district court was entered on August 3, 1951 (R. 165). The petition for appeal was filed and allowed on September 4, 1951 (R. 193, 213). The jurisdiction of this Court is conferred by Section 2 of the Expediting Act of February 11, 1903, 32 Stat. 823, as amended by Section 17 of the Act of June 25, 1948, 62 Stat. 869, 15 U. S. C., Supp. IV, 29. Probable jurisdiction was noted on November 13, 1951 (R. 237).

QUESTIONS PRESENTED

1. Whether the evidence supports the trial court's findings that appellant entered into agreements or understandings with service station operators obligating them to meet their entire requirements of petroleum products and automotive accessories with products sold or sponsored by appellant.

2. Whether the L–O operator and appellant have a relationship analogous to agency or employment which has the effect of removing requirements contracts between them from the ban of the antitrust laws.

3. Whether the requirements contracts found by the district court violated Section 3 of the Clayton Act and Section 1 of the Sherman Act.

4. Whether the relief awarded was appropriate under the circumstances.

STATUTES INVOLVED

The Act of July 2, 1890, 26 Stat. 209, known as the Sherman Act, provides in part as follows:

> Section 1 [as amended by the Act of August 17, 1937, 50 Stat. 693]. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal: * * * [15 U. S. C. 1].

The Act of October 15, 1914, 38 Stat. 730, known as the Clayton Act, provides in part as follows:

> Section 3. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies or other commodities, whether patented or unpatented, for use, consumption or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce. [15 U. S. C. 14.]

STATEMENT

Appellant is a corporation engaged in the business of acquiring and developing oil reserves and producing, transporting, refining and marketing petroleum and petroleum products in California,

Oregon, Washington, Nevada, Idaho, Arizona, herein referred to as "the Western area" (R. 133).[1] Appellant has been enjoined by the court below from certain activities found to be in violation of Section 3 of the Clayton Act and Section 1 of the Sherman Act. Both the factual and legal bases of the district court's decision are challenged by this appeal.

The proceedings below

In April 1947, the United States filed a civil complaint charging appellant (sometimes hereinafter called "Richfield") with having entered into and operated under contracts and understandings with some 2600 service station operators located in the six states comprising "the Western area," under which the brands of petroleum products and automotive accessories to be used, sold or distributed by those stations have been specified and restricted (R. 1). The complaint sought to have the alleged exclusive supply arrangements declared void, and appellant enjoined from entering into any such arrangements in the future (R. 9–10). The complaint also sought an injunction against appellant to restrain it from cancelling leases or sales agreements with independent service station operators for the reason that such operators deal in petroleum products

[1] Appellant also does business in Texas and New Mexico, but no evidence was offered relating to activities in those states (R. 72).

or automotive accessories other than those manufactured or sponsored by appellant (*ibid.*).

The case was tried in May and June of 1951 before Judge Yankwich. On July 2, 1951, the court filed a detailed opinion, decision and order in which it determined that the charges of maintaining unlawful contracts and agreements with independent service station operators had been established (R. 71–104). The court analyzed the three different types of contractual arrangements existing between appellant and its dealers (denominated, respectively, as "L–O," "337", and "3–C") and concluded that (R. 101):

> * * * the exclusive supply agreements and oral understandings between defendant and the independent service station operators involved herein (and including L–O, 337 and 3–C types) are in unreasonable restraint of, and substantially lessen competition in, interstate commerce in petroleum products and automotive accessories, and in violation of Section 1 of the Sherman Act and Section 3 of the Clayton Act;

The court ruled that appellant should be enjoined from entering into or enforcing, or inducing or compelling independent operators (including L–O, 337 and 3–C types) to enter into, contracts or arrangements under which such operators (a) agree to buy petroleum products or automotive accessories exclusively from appel-

lant or from sources sponsored by appellant; or (b) agree that the sale by appellant of petroleum products or automotive accessories shall be subject to the condition that the operator will handle exclusively appellant's products or those sponsored by it (R. 101–2).

Proposed findings and a proposed judgment were submitted by the Government, objections were filed by appellant (R. 104), and a hearing was held on the question of the findings to be entered and relief to be ordered (R. 1974–2006). On August 2, 1951, the court filed its findings of fact, conclusions of law, and final judgment (R. 133, 163, 165).

The judgment declares illegal and void all provisions of agreements or understandings between Richfield and independent dealers operating retail outlets under an L–O, 337 or 3–C type of arrangement, which contain the condition, agreement, or understanding that the independent dealer shall purchase all of his requirements of petroleum products or automotive accessories from Richfield or its representatives (par. IV, R. 167). And Richfield is enjoined from entering into or enforcing any such contract, agreement or understanding in the future (par. V, R. 167–8).

Richfield is further enjoined from cancelling any lease now in effect with any independent dealer operating a retail outlet under an L–O

type of arrangement, except for breach of any of the written covenants contained in the lease. Richfield is forbidden to exercise the 24-hour termination clause contained in any such lease and is permitted to effect cancellation only on 30 days' written notice sent via registered mail to the dealer with a copy to the Attorney General of the United States or his representative. (Par. VI, R. 168–9.) [2]

The facts

Richfield does not have any employee-operated service stations in the Western area (Fdg. 5, R. 135; R. 581). But for many years it has leased or acquired title to service station sites and entered into contractual relations with operators of service stations for retail outlets within the Western area (Fdg. 3, R. 133). As of December 31, 1950, Richfield had contractual relations with 2,965 station operators (Fdg. 31, R. 155).

The three basic types of arrangements (L–O,

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[2] The Department of Justice is given the customary visitorial rights for the purpose of securing compliance with the judgment (par. IX, R. 169–70). The enforcement of the judgment is stayed until six months from the date of final determination of the appeal (par. VIII, R. 169). Within 60 days after judgment becomes operative, Richfield is required to give written notice by registered mail to its independent dealers of the provisions of the judgment (par. VII, R. 169). Jurisdiction of the cause is retained by the court for the purpose of any further orders which might be necessary to carry out the judgment or to modify, terminate or amend any of the provisions thereof (par. X, R. 170).

337, and 3–C) between appellant and service station operators differ in various respects, but as to each group the district court explicitly found that the operator acts as an independent businessman or contractor rather than as an employee or agent in his relationships with appellant (Fdg. 5, R. 135; Fdg. 27, R. 153–4; Concl. 4, R. 163), and that appellant and the service station operator have maintained exclusive dealing arrangements both as to petroleum products and automotive accessories. The former are Richfield products; the latter are supplied through authorized Richfield distributors, and Richfield receives a profit on their sale. (Fdgs. 12, 13, 18–20, 24, 26, 28, 29, R. 142–144, 147–8, 151, 153, 154.)

Appellant is at some pains to distinguish between its legal and actual relationship with L–O stations on the one hand and 3–C and 337 stations on the other. It seeks to demonstrate, contrary to the findings of the trial court, that it has a relationship with L–O operators which it rather vaguely describes as "analogous to the relationship of agency or to the relationship of employment for the purposes of and within the scope and meaning of the Sherman Act and the Clayton Act" (Br. 6; see Br. 73–77). Before turning to the evidence and findings as to appellant's conduct, we shall briefly describe the three classes of stations and their legal relations with appellant.

L–O stations

Under the leased-out or L–O arrangement the fee of the service station property is owned by appellant, or leased by it from a party other than the service station operator (Fdg. 6, R. 136–7). Appellant leases (or subleases) the service station property to the operator under a written lease (Gov. Ex. 1G, R. 251[3]) by the terms of which the operator is required to use the premises as a gas station, to maintain them in good order and repair, and to comply with certain other conditions. The rental is to be paid in specified monthly sums plus additional payments for each gallon of gasoline sold in excess of a specified number of gallons. (Fdgs. 7–9, R. 137–141; Gov. Ex. 1G, R. 251.)

The lease does not contain any provision dealing with the sale of petroleum products or automotive accessories, nor is there any separate written agreement on the subject between appellant and the lessee (Fdg. 6, R. 136–7). The court found, however, and appellant does not deny, that Richfield had entered into "oral contracts and understandings with the independent operators of the L–O stations, under the terms of which the independent operator is required to purchase all of the petroleum products and automotive accessories sold by him at such service station from Rich-

[3] For variations, and earlier versions of the lease form, see Gov. Exs. 1, 1A–1F, 2, R. 239–250, 253.

field" (Fdg. 6, R. 137). Richfield admits that it instructs its L–O operators prior to their "installation" that it requires them to handle Richfield's petroleum products exclusively, and to secure Richfield approved automotive accessories from Richfield's local distributor if the latter is able to supply the operator (Br. 14–15).

Breach by the lessee of any of the express conditions of the lease is ground for termination by the lessor. In addition, either party may terminate the lease on 24 hours' notice.[4] The trial court found that the 24-hour cancellation clause was never used by appellant as a means of terminating the lease for infraction of its express

[4] The habendum clause provides (Gov. Ex. 1–G, R. 251): "TO HAVE AND TO HOLD unto Lessee for the period commencing ----------, 19----, and continuing until terminated by either party by means of a written notice of election to terminate served on the other party in the manner prescribed in Paragraph '13' hereof at least twenty-four hours prior to the effective date of termination specified in such notice."

Paragraph 13, referred to in the habendum clause, merely specifies the mode of service of the notice (R. 252). The form of written lease used by appellant prior to 1941 (Gov. Ex. 1, R. 239) leased the service station property to the lessee for a minimum period of six months with a termination right in either party by written notice 30 days prior to the expiration of any six months period (Fdg. 7, R. 137). Beginning in the year 1941, however, appellant eliminated this provision from its written lease form and provided that the lease could be terminated by either party on 24 hours' notice (Gov. Ex. 1B, R. 243; Fdg. 8, R. 137). The 24-hour cancellation clause has been contained in all forms of L–O leases used by appellant after 1941 (R. 591).

conditions, but was inserted with the intent and purpose of enforcing the exclusive dealing arrangements. (Fdgs. 5, 6, 12, R. 135–7, 142–3.) Richfield admits that failure to carry Richfield's products exclusively has "warranted" terminating the tenure of an L–O operator (Br. 19). On the termination of an L–O lease, it was Richfield's policy to instruct the new lessee that he was not required to buy from the old lessee any non-Richfield products. As a result, the outgoing lessee was unable to dispose of such products to the new lessee. (Fdg. 12, R. 143; R. 1362.) Indeed, Richfield admits that it requires that the incoming operator *shall not acquire* from the outgoing operator anything but Richfield petroleum products, approved automotive accessories and service station tools (Br. 15).

Under the L–O arrangement the service station operator engages in the business of buying petroleum products and automotive accessories and reselling them at retail to the motoring public. The operator purchases and pays Richfield for the products he sells; the products are not consigned to the operator. The operator is engaged on his own account and for profit in building up a clientele of customers. He expends his personal funds in sales solicitation and neighborhood advertising; he offers trade bonuses to his customers in the form of "green stamps" which are paid for by the operator. (Fdg. 10, R. 141–2, R. 1181.)

In advertising, appellant has referred to all of its service station operators, including L–O operators, as "your independent Richfield dealer" in order to impress upon the public that the operators have a stake in their business and are not merely employees (R. 669–72).[5]

The L–O operator generally has an investment in tools, equipment, and merchandise in amounts from $1,000 to $8,000. He is responsible for his own acts and for those of any of his employees which may cause damage to the person or property of others. Appellant does not pay the lessee any wages, salary or other compensation and does not treat him as an employee for the purpose of workmen's compensation, social security, or withholding taxes. The lessee is not treated as eligible for any of the benefits of appellant's employee pension plan. (Fdgs. 10, 11, R. 141–2.) In interviewing applicants for L–O leases appellant would "check to see if they had the capital" and "impress on their minds that they were independent businessmen" (R. 973–4).

3–C stations

The 3–C arrangement is more complex in form than the L–O arrangement, but the end result is quite similar. The fee or a leasehold in the 3–C station is owned by the station operator. Under

[5] As it was put by witness King, vice president of appellant, "we do feel ourselves that these men are operating on their own" (R. 671).

the arrangement, however, Richfield takes a lease or sublease of the premises from the operator and the operator subleases them from Richfield. Thus, the 3–C dealer, like the L–O dealer, is a lessee from Richfield. And like the L–O dealer, the 3–C dealer has a separate sales arrangement with appellant, but in the 3–C case a written sales contract, which is contemporaneously executed with the lease and sublease, is employed.

Both the lease and the sublease are for specified terms but are subject to early termination on various contingencies. The lease to appellant is terminable at appellant's option in the event that the sublease is terminated.* But the operator is given no reciprocal right of termination. The sublease, in turn, may be terminated by appellant (but not by the operator) on seven days' notice in the event of cancellation of the contemporaneous sales contract (Fdg. 17, R. 146; Gov. Ex. 4D, par. 12, R. 267). The lease gives appellant the rights to erect buildings, signs, and equipment on the premises, and to paint the property. The operator-lessor agrees not to conduct on

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* Paragraph 13 of the lease (Gov. Ex. 4, R. 262, 263) provides as follows:

"In the event of any termination of that certain Operator's Lease, executed concurrently herewith by and between the parties hereto, by the terms of which Lessee herein as Lessor therein subleases the premises demised hereby to Lessor herein as Lessee therein, Lessee shall be privileged to forthwith terminate this lease by means of a notice in writing to Lessor. * * *"

premises controlled by him, if any, within 200 yards of the leased premises, any business venture from which petroleum products other than those supplied by appellant are sold or distributed. (Fdg. 15, R. 145; Gov. Ex. 4, par. 8, R. 262, 263.) Under the sublease, the operator assumes full responsibility for maintaining the premises in good order and repair and agrees to indemnify and hold appellant harmless from any claims for damage occurring upon the premises (Gov. Ex. 4D, par. 10, R. 267).

From 1945 until August 1948 (one year and four months after the filing of the complaint herein), the sales contract between appellant and the operator required the latter to purchase his entire requirements of petroleum products from appellant (Fdgs. 14, 18, 19, R. 144, 147–8; Gov. Ex. 4B, par. 1, R. 265). Appellant was given the right to paint the service station with its colors and insignia and, in the event the sales contract was cancelled prior to the stated termination date, appellant was entitled to recover all the monies so expended by it during the preceding two year period (Fdg. 18, R. 147; Gov. Ex. 4B, par. 8, R. 265).

The revised form of sales contract used by appellant in 3–C transactions since August 1948 contains the same painting provision. In place of providing in terms for the purchase of the

operator's entire requirements from appellant, the revised contract specifies minimum and maximum amounts of petroleum products which the operator is to purchase from it (Gov. Ex. 4C, par. 1, R. 266). The minimum quantities of petroleum products which the operator is required to purchase under the revised sales contract are determined by appellant and are usually fixed at 80 percent of the anticipated requirements of the operator (Fdg. 19, R. 147–8).

The trial court found that the practical and intended purpose and effect of the minimum-maximum provision is to require the operator to purchase from appellant all of the petroleum products sold by him at the service station (Fdg. 19, R. 147–8). The court also found that the written agreements between appellant and the 3–C operator had been supplemented and modified by oral agreements and understandings which provided that the operator should also secure his entire requirements of automotive accessories from or through appellant (Fdg. 20, R. 148).

Both the earlier form of sales agreement, and that in use since 1948, provide that the failure of the operator to comply with the terms of the agreement shall entitle the appellant to suspend deliveries until any breach is remedied, or to terminate the agreement forthwith (Gov. Ex. 4B, par. 7, R. 265; Gov. Ex. 4C, par. 7, R. 266).

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337 stations

Under the 337 type of arrangement, as in the 3–C arrangement, the operator holds the fee or leasehold, but there is no lease to appellant or sublease from appellant to the operator. Appellant and the operator enter a written sales agreement for petroleum products, which is usually accompanied by a painting agreement interrelated with it.

From 1937 to August 1948 the sales contract provided that the operator must purchase a specified minimum amount of petroleum products for a minimum period of one year, and also contained a maximum ceiling (Fdg. 22, R. 149; Gov. Ex. 5, R. 268). The maximum and minimum were calculated on the premise that the dealer would buy all his gasoline from Richfield (R. 1108, 1095). Appellant had the right to terminate the agreement on 5 days' notice, while the operator had no right of cancellation at all (Gov. Ex. 5, par. 5, R. 268).

The present form of 337 sales contract, which was adopted in August 1948, also contains a requirement that the operator purchase a minimum quantity of petroleum products from appellant. Under the revised form, however, either party may terminate the contract on 30 days' notice. (Fdg. 23, R. 149–151; Gov. Exs. 5D and 5G, R. 272–3, 276–7.) The minimum-maximum provision of the revised form of 337 sales contract is

comparable to the minimum-maximum provision of the 3–C contract (Fdg. 24, R. 151). The minimum requirements are determined by Richfield, and their practical and intended purpose and effect have been to require the 337 operator to secure his entire requirements of petroleum products from Richfield (*ibid.*).

The customary painting contract authorizes appellant to paint the station with its colors and insignia; it requires that at the time of termination of the sales contract by reason of any breach by the operator, the operator shall repay to Richfield the cost of the painting. (Fdg. 25, R. 151–2; Gov. Exs. 5A, 5C, 5E, 5F, R. 269, 271, 274, 275.) Until August 1948 (over a year after the filing of the complaint herein) the painting agreement required the operator to remove from the service station all signs and insignia, and upon completion of the painting not to place upon or over the painted surfaces

> any advertising sign, trade mark, insignia or any other matter without first procuring the consent and approval of Richfield [Fdg. 25, R. 153].

In the revised version of the painting agreement adopted in August 1948, the provision was modified to read as follows (*ibid.*):

> 1. That Dealer shall remove from the surface of the service station which is to be painted all signs, insignia, and obstructions, so that the obligations of Richfield

hereunder may be performed with a minimum of hindrance.

The district court found that the written sales and painting agreements have been supplemented by oral agreements that the 337 operator shall purchase all of his petroleum products and automotive accessories from or through Richfield. The court further found that the purpose and intended effect of the painting agreement is to secure an exclusive Richfield outlet, and that no painting agreement is entered into by Richfield except upon an oral exclusive dealing understanding. The obligation of the operator to pay for the cost of painting in the event the sales contract is terminated prior to the expiration of the term was intended to and has had the effect of compelling the operator to purchase exclusively from or through Richfield. The effect has been to shut out all competition for the petroleum products and automotive accessory business of the 337 operator. (Fdg. 26, R. 153.)

Appellant's exclusive dealing policy and its implementation

In June 1938 appellant inaugurated a policy of "discontinuing all split-pump resale accounts" (Gov. Ex. 9, R. 284). Henceforth, the rule was to be: "It will be 100% Richfield or we will withdraw from such accounts" (*ibid.*). This policy has never been repudiated. Witness King (vice president of appellant) could recall no instance

since 1938 in which Richfield had sold to split-pump stations (R. 1666–7); and see testimony of Bradford (R. 1039–40). The district court found that Richfield has not, in fact, since that time sold or supplied gasoline to any independent operator who has not in fact purchased all of his gasoline requirements from Richfield, regardless of the provisions of any written sales contract (Fdg. 28, R. 154).

The district court found with respect to all three classes of stations that the exclusive dealing policy was applied not only to gasoline but to other petroleum products and to automotive accessories. And it found that the policy was implemented both by oral agreements and understandings and by termination and threatened termination of agreements with operators or dealers who handled competitors' products.[7] Appellant's course of conduct in pursuing this policy is illuminated by the examples described below.

Bradford, a former district supervisor for appellant and branch manager in Portland from 1937 to 1946, testified to a systematic policing of L–O operators (R. 1072–8). His testimony reveals that an operator who did not adhere to the exclusive dealing policy would have his lease terminated whenever a replacement who would be more certain of complying with the policy could be found (R. 1073). Bradford gave

[7] Fdgs. 5, 6, 12, 18–29, 33, 47, R. 135–137, 142–3, 147–154, 155–6, 162.

examples of two instances in 1944 in which operators had their leases terminated for handling competitive products (R. 1074, 1075; see Gov. Ex. 13, R. 306).[8]

Shrewbridge, a Seattle merchandiser for appellant in 1946 and 1947, also testified concerning the policing of non-complying L–O operators (R. 989–92). Shrewbridge was instructed by his supervisor to advise two operators to get rid of competitive oils or have their leases cancelled (R. 990, 991). Shrewbridge also testified that prospective L–O operators were advised that products of Richfield's competitors were not to

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[8] The attitude of Bradford's superior, Hutchinson, toward one of these operators (Edgar) was graphically described by the witness (R. 1074–5):

"A. Well, it so happens that Mr. Hutchinson resided in the Envoy Apartments right back of this station, up, I think, on the fourth or fifth floor, and the front window of his apartment looked right down on this operation, and Mr. Hutchinson is a Richfield Oil man twenty-four hours a day, and he became very unhappy on Mr. Edgar's operation, and repeatedly I would go to the office and I would get down there somewhere around noon, ordinarily, after the sales meeting, and I would often find a note on my desk on Mr. Edgar's failure to handle Goodyear tires. He was calculating how many tires Mr. Edgar must have sold by watching his operation, and he wouldn't sit up there in the daytime, but the station was open quite late, and the note would give me an estimation on the tires that Mr. Edgar sold as against the number that was sold to Mr. Edgar by the TBA distributor, which, if I recall, would about figure 6 against 75, or something like that."

And see Gov. Ex. 12, R. 305.

be kept in the station (R. 988–9).* He stated that "it more or less, to my knowledge, was an understanding. It was more or less unwritten that he was to handle Richfield products" (R. 988).

Duarte, an Alameda, California, bulk plant commission agent for Richfield from 1938 to 1945 (R. 717), testified, with respect to L–O stations, that "We were supposed to deliver the products to the Richfield dealer and if he didn't want to buy those products, we were to put another new dealer in that would. That was their policy" (R. 721; see R. 732). He also testified that he was instructed to see that all L–O units used 100 percent Richfield products and approved accessories (R. 728).

The case of L–O operator Mills, of Alhambra, California, is illustrative of the impact of appellant's exclusive dealing policy, and of the importance of the 24-hour termination provision of the L–O sublease as the means of enforcing that policy. In 1937 Mills became an L–O operator for Richfield of a station which he had been operating since 1920 (R. 911). Richfield obtained the lease of the property through Mills' efforts (Gov. Ex. 10C, R. 303; R. 915). The original sublease to Mills (the then standard L–O form)

* When asked whether prospective operators were told "what would happen in case they did keep them" in the station, the witness replied, "Well, usually not to a prospective dealer, not to get too harsh right away with him" (R. 989).

provided for termination on 30 days' notice, which could be given only at 6 months' intervals (R. 916).

In May 1941 appellant instructed its merchandisers to replace the 6 months' termination clause contracts with the new 24-hour termination form (Gov. Ex. 10, R. 287). Appellant's Pasadena office requested that an exception be made in Mills' case because he was thought to be an exceptional dealer, and it was feared that he would take offense (Gov. Ex. 10A, R. 301). This request was rejected, the Los Angeles office advising that (Gov. Ex. 10B, R. 302):

> the management does not approve the continuance of the six months' basis in so far as Station #595 is concerned. It is felt that after this long period of time Mr. Mills should have sufficient confidence in the company to sign the new 24-hour type paper.

A further appeal, based upon Mills' history with the company and substantial investment (some $1,500) in equipment, was likewise rejected. The Los Angeles office felt that "if the matter is properly explained" there should be no difficulty in persuading Mills to accept the 24-hour basis (Gov. Ex. 10D, R. 303–4). Eventually Mills signed the new contract.

Under a special rider to the 1937 lease, Mills was permitted to sell competitive oils and accessories up to a certain percentage (R. 917). In

1943 this provision was eliminated, but Mills continued to sell competitive products which offered him a greater margin of profit (R. 919). There were complaints about this practice from the merchandiser (R. 919–20), and in November 1944 Mills was advised "that the company was not satisfied with my operation and that if I was not willing to cooperate that they would have to find somebody to take the station" (R. 922). Richfield found a buyer and Mills sold his station. At that time he had customer accounts which he had built up over a period of many years (R. 922). Mills was paid by his successor for his equipment and stock, less depreciation (R. 923).

The record shows numerous other instances in which L–O operators balked at agreeing to the 24-hour termination clause, and appellant's representatives sought to allay their fears by assuring them of appellant's good faith. Thus when Ellena, an L–O operator, inquired in 1948 about the 24-hour cancellation provision at the time he signed his lease, he was told by appellant's representative "Don't worry about it, Richfield Oil Company is a good company. You don't have to worry about that 24-hour lease" (R. 1314). Ellena was subsequently terminated in 1949 because he had handled products competitive with those manufactured or sponsored by

appellant. He was told to leave within 24 hours (R. 1316). The record shows that he then had an inventory of about $3,300, and a Coca-Cola machine which Richfield representatives had urged him to purchase, but which his successor declined to buy from him (R. 1318).

Smith, a Los Angeles L–O operator, was similarly reassigned in 1941 (R. 1404) and was similarly terminated in 1946 for failing to adhere to the exclusive dealing arrangement (R. 1410; Gov. Ex. 23A, R. 317). He gave as his reason for buying competitive products rather than those designated by appellant the fact that he was able to get better prices on such products (R. 1408). Smith had an investment in equipment and stock at his station of approximately $1,500 (R. 1405). Smith's successor declined to take over some $422 worth of Smith's merchandise which was not Richfield approved (R. 1413).

Hurst, a Portland, Oregon, L–O operator, was not told about the exclusive dealing policy of appellant or the 24-hour termination provision when he negotiated his lease in 1945 (R. 1178). After the lease was signed, appellant's representatives told Hurst that he was expected to handle only Richfield approved products (R. 1179). Thereafter, even though he could buy competitive products more cheaply from other sources, he was advised that he was required to handle appellant's approved products exclusively. He was

told that if he didn't, he "would be dumped out within 24 hours" (R. 1180). Hurst left the station in 1948 voluntarily (R. 1182, 1183). When he left, he was advised that Richfield would only require his successor to buy TBA (*i. e.*, Richfield) approved merchandise from him (R. 1183).

DeLonge, an Olympia, Washington, L-O operator from 1946 to 1947, was told by appellant's representative when he took over the station that the station was "to be my own place of business, and I was my own business manager, and as long as I operated it to the benefit of the Richfield Oil Corporation, I would be able to do as I pleased there" (R. 1257). Later, however, DeLonge was compelled to purchase Richfield approved accessories even though he didn't need them or could purchase other accessories cheaper elsewhere (R. 1262, 1265). With respect to some fan belts not approved by Richfield, DeLonge was told "Those fan belts will come off from there or somebody else will be running the station" (R. 1264). Ultimately, De Longe decided to sell. He could have sold his entire stock at the inventory price of $5,476 to a purchaser of his choice but appellant refused to permit DeLonge's purchaser to take over the station (R. 1268). DeLonge was advised that another purchaser "had been promised my station eight months prior to that time" (R. 1269).

The purchaser selected by appellant declined to buy the entire stock. Appellant's representatives, while assuring DeLonge that they were present at the negotiations "for your protection as we are for anyone else's" (R. 1270), and that they wanted "to see that everybody is satisfied on both sides" (*ibid.*), took the position that the purchaser need buy only Richfield approved products (R. 1271). DeLonge was forced to remove from the premises, and dispose of, as best he could, some $1,300 worth of stock (R. 1273). When DeLonge refused to sign a mutual termination agreement, he was told by Richfield's representatives to " 'Be out of here by 8:00 o'clock in the morning, and take all that trash with you,' indicating my stock" (R. 1273). Appellant's representative wished to get DeLonge out at midnight so "the customers won't know we are kicking him out" (R. 1273). But DeLonge was allowed to leave in the morning because the new lessee refused to take over the station at midnight (*ibid.*).

Wagner, a Taft, California, L–O operator from 1942 to 1947, had an investment of approximately $4,000 in his business (R. 1323, 1324, 1326). He had been handling products not approved by Richfield and was repeatedly cautioned about the practice (R. 1324–5). One morning when he opened his station a representative of appellant presented him with a 24-hour termination notice (Gov. Ex. 662, R. 311), saying "I warned you this

was coming if you didn't get rid of the foreign products" (R. 1326). Wagner subsequently lost about $700 on accounts receivable which he was unable to collect after he was dispossessed (R. 1328).

Delucchi, an L–O operator, testified to the following conversation with a Richfield TBA distributor in July 1949 (R. 1377):

> we talked about the Government's suit against the Standard Oil, and I told him that I would start selling whatever I wanted to.
>
> Q. What did he say to that?
>
> A. He said I couldn't, and I told him I could because the Government guaranteed that I could.
>
> Q. What was his reply?
>
> A. He says "Oh no you can't." He says, "If you do, they just won't sell you any more gas.

In 1949, a competitive supplier, Chester F. Baird of Reno, Nevada, discussed the decision of this Court in the *Standard Oil* case with Torrey, an L–O lessee, in the presence of a bulk plant manager and merchandiser for appellant, for the purpose of persuading Torrey that he was free to purchase products from sources other than appellant. He testified (R. 1531):

> Q. What was your purpose in taking that with you?
>
> A. Well, to emphasize upon them the fact that the market was open on the

Chevron [i. e. Standard Oil] stations, and it was no longer tied up.

Q. When you did that, did Mr. Hunt, the Richfield representative, make any statement?

A. Yes. They got quite a, oh, you might say, a "boot" out of it. *They kind of laughed it off, and said, "It doesn't mean anything.* It is just a matter of process, something they had to go and get done with, and it is all over with, so we will go from here." [Emphasis supplied.]

Appellant has effectively used the painting agreement, or an agreement to effect repairs, at 3–C and 337 stations as a method of inducing or coercing the dealer to adhere to the exclusive dealing policy. A 1940 memorandum from Wilson, appellant's branch manager in Seattle, gives the details of one such transaction (Gov. Ex. 9A, R. 284). Kohl, a Seattle dealer who owned his buildings and equipment and leased the land from a third party, and who was described by Wilson as being a very desirable account (R. 286), wished to have some alterations done at his station by Richfield, the cost of which would be about $2,000 (R. 285). The dealer was already on a 100 percent basis as to gasoline, but apparently was willing to agree to handle Richfield products exclusively in the new lubrication room and to eliminate all competitive canned oils from the station entirely with the exception of Pennzoil (R. 285–286). Wilson recommended that the deal be made because "if

we make the expenditure which is proposed above it will not only mean the assurance of substantial gasoline volume but will also mean that we will have a very good motor oil and grease account" (R. 286).[10]

Duarte, whose testimony in connection with L–O stations has been referred to, *supra*, p. 21, testified, on cross-examination, with respect to the appellant's intention with respect to painting agreements on 337 stations that "all I can tell you is this, that Richfield will preach to us this thing, that that painting agreement, while that station was painted Richfield colors, they asked us to tell the operator that while those Richfield colors were there and they spent money to paint it, that they shouldn't handle anything but Richfield products" (R. 730). The witness also testified that when an independent dealer sold competitive oil "he would be through buying Richfield products in that particular station" (R. 732). When asked whether it was not

[10] The financial importance of exclusive dealing is revealed by the following paragraph in the memorandum:

"When we were in the account on a split pump basis, he averaged 13,500 gallons per month. Since we took the account over on a 100% basis on February 7th, we have averaged well above 40,000 gallons per month. In August the gallonage was 47,726. When we were in the account on a split pump basis our motor oil volume averaged 7 gallons per month. Since we have been in on a 100% basis we have averaged over 55 gallons per month, all of which is still only a drop in the bucket compared to the account's total motor oil volume" (R. 284–5).

true that the independent dealers did handle competitive oils and accessories in his area, Duarte replied "Because Richfield couldn't stop them. They tried to" (R. 732).

Bradford, whose testimony has been referred to in connection with the L–O operators (*supra*, p. 19), was asked the following question with respect to dealer (337) stations (R. 1054):

> Now, in connection with the execution of the sales contract and the painting agreement with any dealer, did you, as a part of the negotiations, exact any promise on the part of the dealer that he should deal 100 percent in Richfield products?

to which he replied (R. 1055):

> Well, the only way I could answer that, *that was what we tried to do,* but one dealer might object strenuously to throwing out a lubrication set-up he had, which might be Pennzoil, or some other oil company. [Emphasis supplied.]

Bradford testified that the estimates of the maximum and minimum quantities used in 337 contracts were based on the premise that the dealer would buy all of his gasoline from Richfield (R. 1108, 1095). After hearing considerable testimony concerning the painting contracts, the district court asked Bradford whether it was not true that the painting agreement "was merely a supplement to your contract to sell them goods, to make sure that he has no other signs,

that the station itself is painted with Richfield colors and that he had no other signs selling other products?" To this, the witness replied, "That is true, yes, sir" (R. 1083).

In answer to a question as to whether 3–C deals were required to be on a "100 percent basis," Bradford replied, "They had to be 100 percent, as far as I knew" (R. 1047).[11]

Moore, a 3–C operator, testified that he was requested by appellant in 1946 to take down signs advertising competitive petroleum products, and to discontinue handling Hy Vis, a competitive oil, at his station (R. 1016). He did so, despite his desire to handle, and the financial advantage in handling, such products (*ibid.*). In 1950, Moore signed the revised form of 3–C contract which eliminated the express full requirements provision (R. 1018), but he was never told that the ruling with respect to displaying competitive signs or products was changed (R. 1024). He continued to refrain from displaying competitive signs, and although he desired to purchase Hy

[11] Appellant asserts (Br. 134, note 83 (b)) that this testimony pertained to a time when 3–C dealers "had to be 100%." We believe appellant at all times attempted to make its dealers be 100 percent Richfield customers. But if appellant intends this statement to mean that Bradford's testimony is limited to the 1945–1948 period of *written* requirements contracts, the claim is not supported by the record, which (as appellant concedes (Br. 134)) shows that Bradford was testifying as to his instructions while in Portland from 1937 to 1946.

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Vis oil, he did not do so and did not feel free to do so (R. 1020).[12]

Ogburn, a 3–C dealer in Reedville, Oregon, testified that his station was inspected in June 1949 by a Richfield representative named Froman who stated that if Ogburn took down a sign advertising a competitive oil, that he would have "a clear record" (R. 1359–1360).

Scollard was a salesman for appellant in Portland, Oregon, from 1945 to 1946, who had some 15 3–C and 337 stations under his jurisdiction. Scollard stated that he was instructed that Richfield service stations were "to handle just nothing but approved merchandise" (R. 1138).[13] He further testified as follows (R. 1139):

> Q. What did Mr. Foster say about the TBA program with respect to whether TBA should be sold to stations handling Richfield gasoline?
>
> A. Well, he was quite strict to see that that was all they handled, just approved merchandise.

McCrae was both an L–O operator and a 337 dealer. McCrae testified as to *both* types of operation that he was told by Richfield repre-

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[12] The district court indicated that it would have sustained a timely objection to the question as to whether Moore felt free to do so (R. 1020).

[13] Appellant suggests (Br. 129, note 78) that the quoted statement concerning policy applied only to L–O stations, but the record references cited for appellant's contention do not support it and no effort was made to clarify the point on cross-examination (R. 1142–44).

sentatives that he must handle Richfield or Richfield-sponsored products exclusively (R. 1225–7 (337); R. 1228–9 (L–O)).[14]

Some 25 representatives of firms selling prod-

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[14] Appellant suggests in effect that McCrae failed clearly to testify that the requirement was enforced while he was operating as a 337 dealer (Br. 134, note 83). The record, however, does not sustain the suggestion. McCrae testified (R. 1225–6):

"Q. Are you talking now about the time of the agreements?

"A. Yes, I am talking about the agreements I made with Richfield at the time [1941] I received the property lease from the property owner. [*i. e.*, became a 337 dealer]

"Q. Was it at or about that time?

"A. Yes, sir, just within a period of two weeks or so.

"Q. Who were parties you talked to?

"A. I talked to Mr. Cook and Mr. Martin, who was a branch manager at Santa Monica at that time.

"Q. Where did the conversations occur?

"A. In the station, at 3016 Main Stret.

"Q. Were there any other persons present?

"A. Mr. Vaughn was there, Benny Vaughn, branch manager of Hollywood, or the manager. He was the district manager, I believe, at that time.

"Q. Was there anything said concerning whether you could handle competitive products?

"A. They told us we were to use 100 percent Richfield approved products.

"Q. Now, at any time subsequent to this, or at the same time, did you have any conversations concerning putting in a competitive gasoline?

"A. Well, within a period, I would say, of 30 days from the time I signed the lease with Richfield, at that time the Standard station across the street was going out of business, so I wanted to handle two types of gasoline, and at that time they told me I could not, that the company had more or less an agreement that they wouldn't—"

ucts competitive with those manufactured or sponsored by appellant testified to their difficulties in selling to Richfield dealers. The bulk of the testimony related to efforts to sell to L–O stations,[15] but there was also testimony as to difficulties in selling to 3–C dealers resulting from Richfield's attitude.[16] The district court found that "In many instances direct sales representatives of manufacturers and producers have unsuccessfully attempted to sell the independent operators who were and still are parties to the written or oral agreements" (Fdg. 45, R. 161).

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[15] *E. g.*, Baker, an accessory salesman, testified that he was present at a Spokane L–O station late in 1946 or early in 1947 and heard a Richfield representative tell the operator that "if he ever caught any more Quaker State oil in that station, that he would cancel his lease immediately" (R. 1393). Brown, another accessory salesman, called on a Portland L–O dealer late in 1947 or early in 1948, and attempted to sell him accessories not approved by appellant. Brown testified that the L–O dealer told him that "he was obligated to buy from the Richfield Oil Company, that that was his understanding when he went into the station, that he had to buy their products. So I called there about three or four times, and quit calling on him" (R. 1461).

[16] Ellis, a Pennzoil salesman, R. 942–4, 963 (dealer Colmery, 1950 or 1951); Cleveland, a Christianson oil salesman, R. 1491–3 (dealer Ogburn, 1949). Ellis testified that as a result of Richfield's attitude, "practically all of my sales was under that kind of basis of a hidden capacity, no display, no signs and what have you, if I did make a sale" (R. 963). Appellant, omitting the phrase "practically all" from the above quotation, suggests that this "testimony of no display" was refuted by photographs taken at the time of trial at some Richfield stations in Ellis' territory (Br. 143).

Substantially of the interstate commerce involved

Since the interstate nature of appellant's business is not in dispute, and is fully described in the findings of the district court (Fdgs. 38–48, R. 157–163; and see Opinion, R. 73–6), we shall not repeat that description here. The substantial character of the commerce involved is indicated by the brief recapitulation below.

As of December 31, 1950, there were 1,343 L–O stations, 261 3–C stations, and 1,361 337 stations, or a total of 2,965 retail outlets in the 6-state Western area, which were subject to the agreements involved in this case.[17] There were some 7,500 agreements, oral and written, with respect to the operators of these stations, which confined the operations of the stations to dealing exclusively with Richfield products and Richfield sponsored products. These stations sold 7.56 percent of the gasoline sold by all stations in the Western area in 1950 (Def. Ex. M–5, R. 437–438). The annual volume of business done at the various types of stations is substantial. The total approximate dollar volume of business in products supplied by Richfield or its distributors at the 2,965 service-station outlets in the year 1950 was over $43,000,000.[18] In 1950, more than 248,000,000

[17] Charts set forth in the findings show the distribution of the various types of stations in the various states (Fdgs. 31, 32, R. 155).

[18] Charts showing the distribution of this amount among types of stations and products are set forth in the findings (Fdgs. 35, 37, R. 156, 157).

gallons of gasoline, and more than 3,500,000 gallons of lubricaitng oils and greases were sold at the three types of stations. (Fdgs. 31–37, R. 155–157.)

SUMMARY OF ARGUMENT

I

The district court has found that appellant had agreements or understandings with 2,965 service stations in six states by which station operators were obligated to buy their entire requirements of petroleum products and automotive accessories from appellant and distributors sponsored by appellant. It concluded that those agreements and understandings restrained and lessened competition in interstate commerce in violation of the Sherman and Clayton Acts. Appellant makes a double-barreled attack on this finding and conclusion. It seeks to divide the service stations involved into two classes. As to one class, the L–O stations, it admits that the dealers undertook to buy only products made or sponsored by appellant and contends that this exclusive dealing arrangement does not violate the antitrust laws because the dealers are to be regarded as "analogous" to agents or employees of appellant, and not as independent dealers. As to the other class, the 3–C and 337 stations, it admits that the dealers are independent but contends that the findings as to the existence of exclusive dealing arrangements are clearly erroneous and should be set aside.

A. It is not necessary to consider under what circumstances use of an "agency" arrangement may remove requirements contracts from the ban of the Sherman and Clayton Acts. For the arrangement here cannot be described as one of agency or employment. The L–O operator leases the filling station from appellant. He does not take goods on consignment; he purchases them from appellant or from distributors authorized by appellant and sells them at his own profit and risk. The dealer builds up his own trade by his own efforts, extends credit and takes credit risks, and hires and fires his own employees. He typically invests from one to eight thousand dollars of his own capital. In entering into an L–O arrangement, appellant informs the dealer that he is to be an independent businessman. In its advertising to the public, appellant describes its dealers (including L–O operators) as independent businessmen. Appellant does not have any of the legal obligations of a principal or owner; it is not liable for the torts of the dealer or his employees, does not pay withholding tax, social security tax, or unemployment compensation with respect to them, and does not enter into collective bargaining in respect of them.

Those who have established themselves as separate business entities for other purposes cannot avoid the legal consequences of their choice for antitrust purposes. *Kiefer-Stewart Co.* v. *Seagram & Sons,* 340 U. S. 211; *Timken Roller*

Bearing Co. v. *United States,* 341 U. S. 593. There is every reason to apply that principle here. Appellant cannot have it both ways. It cannot in the same breath assert to the public, to prospective dealers, and to state and federal tax authorities, that its dealers are independent businessmen, and deny their independence to the courts in the present proceeding.

B. Appellant's attack on the findings as to the 3–C and 337 stations is equally without merit. Those findings are amply supported by testimony that the dealers involved were prevented from displaying and selling competing products, and that salesmen of competing companies were unable to make sales to them. In addition, they are supported by undisputed evidence.

Thus it is undisputed that in 1938 appellant adopted a policy that it would sell only to stations which were "100% Richfield", and that since that time no station which carries Richfield gasoline has at the same time sold any other brand. It is undisputed that the "100% Richfield" policy has been and is applied to the L–O stations, nearly one-half of the total stations involved, through oral understandings enforced by summary termination of the underlying lease. It is also undisputed that for the years immediately prior to the filing of the complaint, and for over one year thereafter, appellant's 3–C dealers entered into express requirements contracts with appellant. It is undisputed that for the same period appellant's 337

dealers generally entered into a painting contract by which they undertook to place no signs on or against the surface of the station of which appellant disapproved—a provision whose evident purpose and effect was to render it difficult for the dealers to carry and sell competitive products.

Shortly after the district court's decision in *United States* v. *Standard Oil Co. of Calif.*, 78 F. Supp. 850, affirmed, 337 U. S. 293, appellant eliminated the express requirements provision from its 3–C contract, and the veto power on signs from its painting agreements. But there is no suggestion that, at any time, Richfield told its dealers that the "100% Richfield" policy was no longer applicable and that they were free to handle and display competing goods. And its present contracts with its 3–C and 337 dealers contain provisions requiring them to buy minimum quantities of appellant's petroleum products, which the evidence discloses and the court found were determined by appellant on the basis of approximately 80% of the dealer's anticipated requirements—a provision which plainly makes it impracticable for the dealer to sell competing products, for fear of failing to sell his fixed quota of appellant's products.

We submit that the various circumstances to which we have referred furnish ample basis for the district court's determination that there was continuing understanding and agreement that the

337 and 3–C dealers would, like the L–O dealers, confine their purchases of petroleum products to those made or sponsored by Richfield.

II

The arrangements found by the district court clearly come within the prohibitions of Section 3 of the Clayton Act as interpreted by this Court in *Standard Oil Co.* v. *United States,* 337 U. S. 293. That case held that Section 3 outlawed requirements contracts where the effect of the contract is to foreclose competition "in a substantial share of the line of commerce affected" (p. 314). The effect of the requirements contracts here is to deny to Richfield competitors access to the 2,965 filling stations involved. These stations sold 7.5% of all the gasoline sold by retail stations in the six states involved; in 1950 they distributed some $43,000,000 of petroleum products and accessories. Any argument that a business of that size is not substantial would eviscerate Section 3 of the Clayton Act by making it applicable only to the very largest companies in an industry.

The arrangements also violate Section 1 of the Sherman Act. It is unlawful *per se* to foreclose competitors from a substantial market. *International Salt Co.* v. *United States,* 332 U. S. 392; *Fashion Originators Guild* v. *Federal Trade Commission,* 312 U. S. 457. Appellant has entered into numerous exclusive dealing contracts and understandings with 2,965 independent sta-

tion operators with the intent and effect of foreclosing competitors from access to the $43,000,000 market represented by those stations.

III

The relief awarded by the district court was appropriate to remedy the evils disclosed. The injunction against entering into or enforcing any requirements contracts was clearly supported by the findings. But even if it were held that certain underlying findings lack adequate evidentiary support, the injunction should stand. It is admitted that appellant had adopted a "100% Richfield" policy in 1938 and had never since advised its dealers of any change in policy, that appellant now has and enforces understandings with its L–O dealers (nearly one-half of its total dealers) obligating them not to buy competing products; and that appellant had, for several years prior to and over one year after the filing of the complaint herein, an express full requirements contract with its 3–C dealers. On these admitted facts the United States was entitled to a general injunction prohibiting exclusive dealing contracts. For "relief, to be effective, must go beyond the narrow limits of the proven violation." *United States* v. *United States Gypsum Company*, 340 U. S. 76, 90.

Appellant objects to the provision of the decree enjoining use of the 24 hour termination clause of the L–O leases. That provision was shown to be the principal means used by appellant to enforce

compliance with the illegal requirements undertakings; its drastic nature gave it a tremendous *in terrorem* effect. So long as the leases could be terminated by appellant without cause, there could be no guaranty against sanctions being applied against L–O operators who carry competing goods. One who has been intimidated in the past needs special assurance. Appellant has not suggested any alternative means by which the L–O operators could be rendered secure from the threat of sanctions if they incurred its displeasure. If, at some future time, after the oppressive atmosphere generated by appellant's past conduct has been dissipated, it should appear that the decree is working hardship upon appellant, it will be open to it to make appropriate application to the district court. Cf. *Lorain Journal Co.* v. *United States,* 342 U. S. 143.

ARGUMENT

I. The District Court correctly held as to all types of stations involved that appellant had requirements contracts with independent dealers

The main burden of appellant's argument is that it did not enter into any requirements contracts with independent dealers. This contention has two branches. As to the L–O stations, appellant freely admits (Br. 6) the existence of understandings with the station operators that they were to buy only petroleum products and tires, batteries and accessories which were sold or sponsored by appellant, but argues that those

agreements do not offend the Shelman and Clayton Acts because the operators of those stations were not independent dealers but had a relationship with Richfield which was analogous to the relationship of employment or agency (Br. 52–95). This contention was first advanced in appellant's amendment to its answer (R. 23–24) filed June 20, 1950, about one year after this Court's decision in *Standard Oil Co.* v. *United States,* 337 U. S. 293. As to the 3–C and 337 stations, appellant's argument runs the other way; it admits that the operators of these stations were independent dealers, but denies that there were any agreements that those dealers would buy their requirements from appellant (Br. 117–148).

A. The L–O stations

In *Federal Trade Commission* v. *Curtis Company,* 260 U. S. 568, and *United States* v. *General Electric Co.,* 272 U. S. 476, this Court held that the Sherman and Clayton Acts permitted certain agreements between a principal and his agent which would not be permitted between independent businessmen. In the *Curtis* case, it sustained agreements that the agents should not sell goods of competitors; in the *General Electric* case, it sustained agreements as to the price at which the agents would sell.

It is not necessary here to consider under what circumstances agreements with a so-called "agent" may violate the antitrust laws. For

present purposes, the important thing about both the *Curtis* and *General Electric* cases is that, as the Court viewed the facts in each of them, the transaction had all the aspects of genuine agency. Thus, in *General Electric,* this Court emphasized that lamps were consigned to the agent and remained the company's property until sold, lamps unsold at the termination of the agency being returned to the company. Proceeds of sales were to be held for the company, the agent being paid a commission. The company assumed the risk of fire, flood, obsolescence, and price decline and carried whatever insurance was carried (272 U. S. at 482–483). Similarly, in the *Curtis* case, it appeared that magazines were consigned to the agent, unsold magazines being returned, and that one of the principal functions of the agent was to train and supervise a body of school boys to sell magazines in accordance with a plan developed by the company. No contention was made that this was not a genuine agency; the contention was simply that as to those agents who had formerly been independent dealers the effect of the plan had been to curtail competition.

The relationship here involved cannot conceivably be described as that of agency or employment. Appellant does not contend that the L–O operators were agents or employees within the common-law definition (cf. Br. 73). Clearly they were not. The dealers were regarded and functioned as independent businessmen. They did

not take goods on consignment; they purchased those goods for their own account. They were not paid on a commission basis; they conducted the many activities of a gasoline service station for their own profit. They had substantial capital investments, ranging from one to eight thousand dollars, in tools and equipment and stock on hand. They built up a business as a result of their own efforts, hired and fired their own employees, extended credit and took the credit risks (except in those cases in which the credit was guaranteed by the appellant through its credit-card system). When the station was sold, they took any loss on "approved" as well as "nonapproved" merchandise.

L–O dealers were held out to the general public as independent dealers. It was stipulated that in its radio advertising appellant referred to the operators of the service stations under the three arrangements (L–O, 3–C and 337) as "your independent Richfield dealer" (R. 669–672). Appellant's vice-president testified that the purpose of so doing was "to impress upon the public that these men have a stake in the business, and they are not merely employees" and stated that "we do feel ourselves that these men are operating on their own" (R. 671).[19]

[19] See also the testimony of Weston, a former merchandiser of appellant, that in interviewing a prospective L–O dealer, appellant would "check to see if they had the capital" and "impress on their minds that they were independent businessmen" (R. 973–4).

This arrangement evidently served appellant's convenience. Except for a few instances during World War II, appellant has not had any employee-operated stations (Fdg. 5, R. 135). Undoubtedly it felt that a dealer who did business at his own risk and for his own profit and who invested an appreciable amount of his own capital, would display greater initiative, responsibility and stability than would a mere employee. By such a policy appellant evidently hoped to attract a responsible group of dealers, who would have prestige in their community and would attract and retain steady customers. Moreover, as the district court found, appellant, by the arrangement which it adopted, avoided legal burdens which would have arisen under an agency or employment relationship.

Under the L–O arrangement the operator is responsible for any damage resulting from his own acts and those of his employees (*supra*, p. 12); Appellant is thereby relieved of numerous liabilities which it might have incurred under an agency or employment relationship. Appellant does not withhold any taxes for the L–O operator or his employees; and it does not pay workmen's compensation, social security or unemployment taxes in respect of the L–O operator or his employees. Appellant is subject, in respect of L–O operators and their employees, to no requirement

of collective bargaining,[20] and to no provision of minimum wage and maximum hour legislation, or of any of the other multitudinous state and federal regulations of the employee relationship. (*supra*, p. 12.)

In other words, appellant is trying to have it both ways. It has sought to have all the advantages, legal and practical, of treating the L–O station operators as independent businessmen, but when it comes to the application of the antitrust laws it seeks to avoid the consequences of the relationship into which it has entered. It asserts the legality of denying to the L–O operators the right to handle competitive goods, and thus of excluding competitors from the market represented by the "independent Richfield dealers". It seeks this result, moreover, not by urging that its L–O dealers henceforth should be treated as its agents or employees for all purposes but by insisting that, although the dealers are not agents or employees for any other purpose, they should be treated as "analogous" to agents or employees for purposes of the antitrust laws (Br. 6).

It is established law that those who choose to conduct business through the form of separate entities, cannot, for antitrust purposes, avoid the consequences of the form they have selected. This Court has repeatedly held that even common own-

[20] It may be noted in passing that it is doubtful if the 24-hour termination clause, or anything similar to it, would emerge as the result of a collective bargaining process.

ership or control of contracting or conspiring corporations does not liberate them from the impact of the antitrust laws.[21] As was aptly stated in *United States* v. *General Motors Corp.*, 121 F. 2d 376, 404 (C. A. 7), certiorari denied, 314 U. S. 618 (dealing with a conspiracy between a corporation and its wholly owned subsidiary), "Nor can the appellants enjoy the benefits of separate corporate identity and escape the consequences of an illegal combination in restraint of trade by insisting that they are in effect a single trader." In the present case, as has been shown, the separate status of the dealer is not merely a matter of form, but has substantial incidents in terms of distribution of profits and losses, liability to third persons, and relationships between the dealer and appellant.

It is true that appellant exercises control over the L–O operator in various ways, but the exercise of some control, or even complete control, by one business entity over another does not confer exemption from the antitrust laws. *Kiefer-Stewart Co.* v. *Seagram & Sons*, 340 U. S. 211, 215. The district court lucidly exposed the paradox which results from the argument that exercise of control takes agreements between con-

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[21] *Timken Roller Bearing Co.* v. *United States*, 341 U. S. 593, 598; *Kiefer-Stewart Co.* v. *Seagram & Sons*, 340 U. S. 211, 215; *United States* v. *Yellow Cab Co.*, 332 U. S. 218, 227.

troller and controllee out of the operation of the antitrust laws (R. 80–81):

> In a sense, in this complex and interdependent world, no one is really independent. But when, through a formal and written instrument, a relationship is established by which exclusive possession and control of property is turned over to another, in exchange for a specified rental with full responsibility for the conduct of the business falling upon the lessee, with all profit or loss accruing entirely to him and not to the transferor, the relationship satisfies all the requirements of an independent enterprise. And when a corporation like Richfield deals with such an enterprise, it cannot be said to be dealing *with itself,* as though the estate it created were nothing and the person in charge, to whom possession was turned over, is a mere employee because, under clauses not contained in the contract, they supervise his actions, regulate, to some extent, his personal appearance, and do other things, some distinctly illegal * * *.

Appellant argues, however, that it created these service stations, and that consequently to deny their trade to competitors does not deprive those competitors of any market which would otherwise have been available to them (Br. 75). The argument rests on a faulty assumption of fact. The evidence indicates that some of the L–O operators had previously been dealers or had assisted ap-

pellant in getting the service station properties.[22] Moreover, L–O dealers were often told, when they first took over a station, that they were to act as independent businessmen;[23] very possibly they would not have taken the station on any other basis. And this record shows that, even despite the unlawful exclusive dealing commitments, and coercion by appellant, the L–O dealers have in fact offered a substantial market for competitive petroleum products and accessories, a market which has been vigorously pursued by competitors (*supra*, pp. 18–28).

But appellant's argument is subject to more basic objections than failure of proof. In the first place, the "creation" of an independent business entity does not give the creator a permanent license to make agreements with it restraining trade. As has been pointed out, a corporation may not conspire or contract to restrain trade even with its wholly owned subsidiary. Surely, the lessees here are less the creatures of Richfield than is such a subsidiary.[24]

[22] Thus, Mills had operated his station for 17 years before he entered into an L–O arrangement with appellant, and appellant obtained the lease of the station through his efforts. See pp. 21–23, *supra*.

[23] See testimony of Bradford, Hurst and DeLonge, *supra*, pp. 19, 24–26, and of Weston, *supra*, p. 45 n. 19.

[24] It might be true in a literal sense that an inventor creates something new which would not have existed but for him; this fact, however, does not give him a license to use the invention to restrain trade, except within the precise terms of the patent grant. *United States* v. *Masonite Corp.*, 316 U. S. 265.

Second, it does not follow that if Richfield had not built the stations it did, no one else would have filled the vacuum. At least some of those who have become L–O operators would presumably have become independent dealers by some other means if Richfield had not offered them the opportunity of operating stations of their own. It is therefore unrealistic to suggest that the demand created by Richfield-built stations is a demand in which Richfield has a proprietary interest. And, under such a theory, the history of each station would be determinative (presumably indefinitely) of the extent to which it could lawfully enter exclusive dealing contracts. The former independent taken over by Richfield on an L–O basis would be classified "independent" and Richfield could not lawfully agree to sell to it on an exclusive basis. On the other hand, the station which was built by Richfield and leased out (or even sold) to an independent dealer would presumably be a "Richfield" station, and agreements between it and appellant restraining trade would be outside the antitrust laws. It seems unnecessary to labor the absurdity and impracticality of this result.[25]

[25] It is surprising that appellant does not contend that the 3–C stations are also within its private selling province. They, too, are leased by Richfield to the operator. It is true that the operator is usually the owner of the fee, but that would seem to be irrelevant to Richfield's theory, because Richfield is not necessarily the owner of the fee of the L–O station. Is a station that Richfield leases from A and subleases to B any less a "natural" market for Richfield products than a station which Richfield leases from A and subleases to A?

In *United States* v. *Masonite Corp.*, 316 U. S. 265, 280, this Court observed in connection with an effort to use a *del credere* agency device to avoid the impact of the Sherman Act that "the result must turn not on the skill with which counsel has manipulated the concepts of 'sale' and 'agency' but on the significance of the business practices in terms of restraint of trade." In the present case the significance of appellant's business practices with respect to its L–O stations is that 1,343 individual retail businesses are withdrawn from the general market for petroleum products and automotive accessories, except to the extent that they can enter that market surreptitiously.

B. The 3–C and 337 stations

As to the 3–C and 337 stations, appellant admits that the dealers were independent businessmen but contends that the findings that those dealers agreed to fill their entire requirements with Richfield or Richfield-sponsored products are "clearly erroneous" (F. R. C. P. Rule 52 (a)) and should be set aside (Br. 117–143). Appellant challenges many of the findings of fact in detail, and invites this Court to undertake a minute examination of the evidence to test their correctness. Although we believe that the evidence set forth in the Statement, *supra*, shows that here, as in *Timken Roller Bearing Co.* v. *United States*, 341 U. S. 593, 597, appellant's

"lengthy brief has failed to establish that there was error in making any crucial, or even important, ultimate or subsidiary finding," we think that facts which are substantially undisputed go far toward sustaining the essence of the challenged findings.

It is not disputed that in June 1938 appellant inaugurated a policy of "discontinuing all split-pump resale accounts" so as to sell only to stations that were "100% Richfield" (Gov. Ex. 9, R. 284). It is undisputed that at no time since has any Richfield dealer (L–O, 3–C or 337) carried any other brand of gasoline while carrying Richfield gasoline (Appellant's Br. 119).[26]

[26] Appellant asserts that this unanimity of its dealers is due to voluntary choice by the dealers, and to the fact that appellant has never solicited the business of the small minority of existing dealers operating split pump stations (Br. 136–138). Apparently, however, appellant in its business practices had less faith in this voluntary tendency of dealers to carry only one brand of gasoline than it displays in its brief. For it is undisputed that appellant now requires the L–O dealers to agree not to carry competing gasoline; that it had a written requirements contract with its 3–C operators until after the district court's decision in the *Standard Oil* case outlawing such contracts; and that it presently enters into agreements—the minimum-maximum agreement and the painting contract—which the district court found had the purpose and effect of requiring adherence to its "100% Richfield" policy.

Needless to say, the decree below does not prevent dealers from handling only Richfield products by voluntary choice. Cf. *Standard Oil Co. of Calif.* v. *United States*, 337 U. S. 293, 313–314. It merely enjoins any *agreement* between appellant and its dealers tending to require adherence of dealers to such a policy.

It is also, we think, not seriously open to dispute that as to petroleum products this "100% Richfield" policy was applied until August 1948 at all three types of stations. In the case of the 3–C stations this was done by an express full requirements contract. In the case of the 337 stations there was no express full requirements contract, but there were an express maximum-minimum contract and a painting contract which gave Richfield the express right to forbid display on the surface of the station of any signs of which it disapproved. In the case of L–O stations the "100% Richfield" policy was not reflected in any written agreement, but it is undisputed that it was universally imposed, and has been policed through use of the 24-hour termination provision (*supra,* p. 42).

On June 7, 1948, the District Court for the Southern District of California rendered its decision in *United States* v. *Standard Oil Co. of Calif.,* 78 F. Supp. 850, affirmed, 337 U. S. 293, and on June 30, 1948, it entered a decree enjoining enforcement of any oral or written requirements contract by Standard in the Western area. Shortly after that decision, appellant made certain changes in the contracts with its dealers to eliminate certain provisions which on their face were clearly illegal. Appellant does not contend, however, that as to its L–O stations, which constituted nearly one-half of its total number of stations (Fdg. 31, R. 155), it made any departure

from the previous "100% Richfield" policy. Nor does it contend that it ever told any 3–C or 337 dealer that the former policy had been ended as to 3–C or 337 stations, and that such stations were now free to distribute competing products. Cf. pp. 26–28, *supra*. On the contrary, the record demonstrates that appellant has tried to continue the former policy so far as that could be done without overt and obvious illegality.

In deference to the *Standard Oil* decision appellant did, in August, 1948, one year and four months after the complaint in this case was filed, eliminate from its written sales contracts applicable to 3–C stations any express full requirements provision. Prior to that time, Section 1 of the 3–C sales contract expressly provided that the operator agreed to buy his "entire requirements" of petroleum products (gasoline, lubricating oils and greases) from Richfield; he also undertook to buy, and Richfield to sell, stated monthly minima (Fdg. 18, R. 147). Thereafter Section 1 was amended to provide merely that the operator agreed to buy, and Richfield to sell, stated monthly maximum and minimum quantities of petroleum products (Fdg. 19, R. 148). Thus the 3–C sales contract took essentially the same form in this respect as did the 337 contract.[27]

[27] In August, 1948, appellant also changed its 337 sales contract (Fdgs. 22, 23, R. 149–150) so as to permit changes in amounts based on abnormal climatic or other conditions and to give appellant the right in its absolute discretion and without liability to restrict and curtail deliveries.

The district court found that the maximum-minimum provisions of both the 3–C sales contract as thus revised, and the 337 sales contract, had the practical and intended effect of requiring the operator to buy all his requirements of petroleum products from Richfield (Fdgs. 19, 24, R. 148, 151). We think it is evident that that finding is correct. As the court found, the minimum figures were set at about 80% of the operator's anticipated requirements. The maxima and minima were set by appellant and there was uncontradicted testimony that they were set on the assumption that the dealer would buy all his requirements from Richfield.

We see very little difference, so far as effect on competition is concerned, between an agreement compelling a dealer to buy 100% of his requirements and one compelling him to buy 80% of his requirements. In either event, such a contract renders it unlikely that the operator will ever be in a position to buy competing products, except sporadically and occasionally. In order to be sure that he would not become overstocked, the dealer would have to sell his entire agreed quota—80% of his past sales for the period—before selling any competitive products. Stocking competitive products under such circumstances would hardly be worth the trouble. And while a seller may have a legitimate interest in fixing, within limits, the quantity of future deliveries to which he is committed, the use of a

substantial percentage of the purchaser's requirements as the yardstick plainly imports an intention to deny the purchaser's custom to others.

This conclusion is reinforced by the use which Richfield has made of such maximum-minimum contracts. As the district court found, a similar maximum-minimum form of sale contract was in force as to 3–C stations (then known as 2–B stations) from 1937 to 1944 (Fdgs. 24, 13, R. 151, 143) and as to 337 stations from 1937 to 1948, during which period the "100% Richfield" policy was in effect as to all kinds of stations.

The lack of any intent to abandon the "100% Richfield" policy is also indicated by the fact that no change was made in the underlying lease from the 3–C station operator to Richfield. Since August, 1948, as before, that lease has provided that the lessor-operator

> agrees not to conduct or permit to be conducted on premises controlled by Lessor, if any, within two hundred (200) yards of the premises demised and leased, any business venture from which petroleum products other than those supplied by Lessee are sold or distributed. [Par. 8, Fdg. 15, R. 145.]

For breach of this covenant Richfield could terminate the lease after 30 days (par. 10, Gov. Ex. 4, R. 263). This express prohibition of the sale of non-Richfield products from premises within 200 yards of the leased station, even if

it does not of its own force import an exclusive dealing requirement as to the leased station, is explainable only on the assumption that the operator is committed to selling exclusively Richfield products from the leased station.

The other principal change made in August, 1948, was in the painting contract applicable to the 337 stations. Prior to August, 1948, the 337 station painting contract provided that the dealer shall remove all insignia from the surface of the stations and, after the station is painted in Richfield's distinctive colors, "shall not place upon or over the painted surfaces any advertising signs, trade mark, insignia or any other matter without first procuring the consent and approval of Richfield" (Fdg. 25, R. 152–153). As one of appellant's branch managers admitted, the purpose of such a painting agreement was to make sure that the station "had no other signs selling other products" (Bradford, R. 1083). Indeed, the necessary purpose and effect of such a provision is to discourage sale of competing goods, since filling station sales depend in large measure on ability to attract the passing motorist by prominent signs and advertising displays. After the *Standard Oil* decision, the provision calling for Richfield's approval of insignia was eliminated; the contract continued, however, to require the operator to remove all signs and insignia prior to painting (Fdg. 25, R. 153). Thus, while its

language is less explicit, it strongly tends in the same direction as before.[28]

With respect to T. B. A. (tires, batteries, and accessories) there was no written agreement with any dealer. Appellant does not dispute, however, that the "100% Richfield" policy was applied to T. B. A. sale by L–O dealers, and the record shows that it was vigorously policed and vigorously enforced. The district court found that it was also applied to 3–C and 337 stations, both before and after the *Standard Oil* decision was rendered by the district court; we have set out in the Statement, *supra,* pp. 18–34, some of the evidence supporting those findings. That evidence includes substantial testimony by 3–C and 337 dealers, and by salesmen to such dealers, that the "100% Richfield" policy was insisted on and that competing salesmen found it difficult to make sales.

Appellant argues that the policy was not wholly successful and that many 3–C and 337 dealers did handle some competing oils and accessories. But it has never been the law that only those schemes to violate the Sherman Act which are completely successful can be enjoined. The eco-

[28] 337 dealers generally entered into such painting contracts. Appellant admits that of 1,361 sales contracts in effect with 337 dealers as of December 31, 1950, 853, or over 60%, were made *concurrently* with painting contracts (Br. 142). Other dealers entered into painting contracts after the sales contract was signed.

nomic advantages to the dealers of carrying competing products would seem to have been so strong that no exclusive dealing policy could be fully enforced. Thus many L–O dealers, to whom appellant concedes that the "100% Richfield" policy was applied, persisted in handling competing products notwithstanding appellant's vigorous policing and frequent use of the drastic 24-hour termination clause to enforce exclusive dealing. (See pp. 18–28, *supra.*) Frequently sales to Richfield stations were made on a "hidden capacity, no display, no signs" basis (see p. 34, n. 16, *supra*).[29] The fact that the "100% Richfield" policy could not be made wholly effective hardly establishes that there were no exclusive dealing agreements in effect, or that those agreements did not result in a considerable, although less than complete, elimination of competition.

II. Appellant's exclusive dealing arrangements and agreements violate the Clayton and Sherman acts

A. Section 3 of the Clayton act

The section provides in relevant part:

> it shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, ma-

[29] The secrecy to which dealers desiring to defy appellant's policy often felt it necessary to resort strongly suggests that the clandestine action was motivated by the fact that the handling of competitive products was contrary to agreements or understandings between appellant and the dealer.

> chinery, supplies or other commodities, whether patented or unpatented, for use, consumption or resale within the United States * * * on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use or deal in the goods * * * of a competitor or competitors of the * * * seller, *where the effect of such lease, sale, or contract for sale or such condition, agreement or understanding may be to substantially lessen competition* or tend to create a monopoly in any line of commerce. [Emphasis supplied.]

The conclusion of the court below that appellant's exclusive dealing contracts and understandings with the three classes of stations violate the above section cannot seriously be questioned in view of the controlling decision of this Court in *Standard Oil Company of California* v. *United States*, 337 U. S. 293. In the *Standard Oil* case full requirements contracts between Standard and some 6,000 independent stations in the Western area were held unlawful under Section 3. The Court's opinion pointed out (pp. 297–8) that the contracts obviously would violate the section unless excepted by the qualifying clause italicized above. It then exhaustively reviewed the prior cases interpreting the section, analyzed the character of proof necessary to meet the test of substantiality, and concluded as follows (p. 314):

> We conclude, therefore, that the qualifying clause of § 3 is satisfied by proof that

> competition has been foreclosed in a substantial share of the line of commerce affected. It cannot be gainsaid that observance by a dealer of his requirements contract with Standard does effectively foreclose whatever opportunity there might be for competing suppliers to attract his patronage, and it is clear that the affected proportion of retail sales of petroleum products is substantial. In view of the widespread adoption of such contracts by Standard's competitors and the availability of alternative ways of obtaining an assured market, evidence that competitive activity has not actually declined is inconclusive. Standard's use of the contracts creates just such a potential clog on competition as it was the purpose of § 3 to remove wherever, were it to become actual, it would impede a substantial amount of competitive activity.

In Point I, *supra,* it was demonstrated that the 1,343 L–O dealers here involved were correctly found by the court below to be independent businessmen. The remaining 1,622 3–C and 337 dealers are admittedly independent. And it was demonstrated that the findings of exclusive dealing contracts and arrangement between appellant and its dealers are fully sustained by the evidence. It thus becomes clear that the facts here are very similar to those in the *Standard Oil* case. In each case an oil company has maintained exclusive dealing contracts as to petroleum products and

automotive accessories with numerous independent retail outlets.

Appellant suggests that this case may be distinguished from the *Standard Oil* case on the basis of the substantiality of the commerce involved (Br. 104–108, 149). We submit that the distinction is frivolous. To be sure, Standard is bigger than Richfield, and if market dominance were the test the difference in size between the two might be material. The test of market dominance, however, was specifically rejected in the *Standard Oil* case; indeed had it been accepted the case would have had a different outcome, since the Court noted that "Standard's share of the retail market for gasoline, even including sales through company-owned stations, is hardly large enough to conclude as a matter of law that it occupies a dominant position, nor did the trial court so find" (337 U. S. at 302).

The test, then, is one of substantiality of the share of the line of commerce affected (*supra,* pp. 61–62). Here 2,965 retail outlets subject to some 7,500 unlawful agreements, oral and written, handle some 248,000,000 gallons of gasoline, and 3,500,000 gallons of lubricating oils and grease annually. In 1950 the approximate dollar volume of business in products supplied by Richfield or its distributors to the stations here involved was $43,000,000. And the 2,965 stations sold 7.56 percent of the gasoline sold by all stations in the Western area in 1950. (*Supra,* pp. 34–35). It is ob-

vious that this is a substantial share by any reasonable standard.

If appellant's contention that it is permissible for it to use requirements contracts were accepted, it would follow that other suppliers might do the same, since what is lawful for Richfield is lawful for others similarly situated.[30] Yet it is obvious that if all the suppliers smaller than Standard were allowed to use requirements contracts, the cumulative impact upon competition would be far greater than would result from such use by Standard alone. If appellant's view were to prevail generally, Section 3 of the Clayton Act would be rendered virtually nugatory in respect of requirements contracts because it would apply only to the very largest suppliers in an industry. We submit that such a result cannot be justified under the statute.

B. Section 1 of the Sherman act

The court below held that appellant's contracts and understandings are in violation of Section 1 of the Sherman Act, as well as Section 3 of the Clayton Act (Concl. 2, R. 163; Judgment, par. II, R. 167). As that holding is not necessary to sustain the judgment, and as this Court found it unnecessary to reach the Sherman Act question

[30] In the *Standard Oil* case, *supra*, it was noted that "all the other [i. e. other than Standard] major suppliers have also been using requirements contracts" (p. 309).

in the parallel *Standard Oil* case, that question will be discussed only briefly here.[31]

Appellant points out that not all restraints are unreasonable, and suggests that the record herein is deficient in proof to establish the various elements necessary to show unreasonableness here (Br. 95–107). Appellant further suggests (Br. 98), and the Government agrees, that the district court has in effect held the restraints here imposed to be unreasonable *per se*.

This Court has held that it is unreasonable *per se* to foreclose competitors from any substantial market. *International Salt Co.* v. *United States*, 332 U. S. 392; *United States* v. *Yellow Cab Co.*, 332 U. S. 218. It is "unlawful to exclude from the market any of those who supply it", *Fashion Originators Guild* v. *Federal Trade Commission*, 114 F. 2d 80, 85 (C. A. 2), affirmed, 312 U. S. 457. The exclusive dealing arrangements here are designed to foreclose competing oil companies, and competing manufacturers and distributors of automotive accessories, from the very substantial market represented by 2,965 retail gasoline stations. The substantiality of the commerce involved, both dollarwise and percentagewise, cannot seriously be disputed.

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[31] For a fuller discussion of this question, the attention of the Court is invited to pages 25 to 41 of the Brief for the United States in the *Standard Oil* case (Oct. T. 1948, No. 279).

It is of course true that all restraints do not fall in the *per se* class, and that it has been held that exclusive dealing brought about by vertical integration is not always illegal *per se*. *United States* v. *Columbia Steel Co.*, 334 U. S. 495, 523. In the *Columbia Steel* case this Court upheld an acquisition of assets of a steel fabricating company as a step in vertical integration of steel producing and fabricating facilities, despite the fact that the acquired facilities would be supplied exclusively with steel produced by the acquiring companies. But the Court did not suggest that exclusive dealing contracts were never unreasonable *per se*. To the contrary, the Court approved the holding of *United States* v. *Yellow Cab Co.*, 332 U. S. 218, and quoted with apparent approval (p. 521) the following excerpt from that opinion (332 U. S. at 226–7):

> Nor can it be doubted that combinations and conspiracies of the type alleged in this case fall within the ban of the Sherman Act. By excluding all cab manufacturers other than CCM from that part of the market represented by the cab operating companies under their control, the appellees effectively limit the outlets through which cabs may be sold in interstate commerce. Limitations of that nature have been condemned time and again as violative of the Act. *Associated Press* v. *United States*, 326 U. S. 1, 18–19, and cases cited. In addition, by preventing the cab

> operating companies under their control from purchasing cabs from manufacturers other than CCM, the appellees deny those companies the oportunity to purchase cabs in a free, competitive market. The Sherman Act has never been thought to sanction such a conspiracy to restrain the free purchase of goods in interstate commerce.

In the *Columbia Steel* case the Court pointed out that in the *Yellow Cab* case there was an intent to monopolize the taxicab business in four cities (p. 522). Here there are express findings of an intent on the part of appellant to confine the independent operators of the 2,965 retail stations to the particular products and automotive accessories handled or sponsored by Richfield, to deny to them access to competitive products, and to deny to competitive manufacturers and suppliers of petroleum and automotive accessories access to this substantial group of independent retail outlets (Fdgs. 12, 13, 19, 24, 26, 28, 29, 47, R. 142, 143–4, 147–8, 151, 153, 154, 162; Concls. 6–9, R. 164–5).

It is important to note that the *Columbia Steel* case did not present the issue of the lawfulness or unlawfulness of exclusive dealing arrangements between independent suppliers and retailers. It dealt with the question of the permissibility of a particular vertical integration. Here appellant does not seek to integrate, but to restrain the trade of 2,965 independent businessmen.

Where, as here, the commerce involved is quantitatively and proportionately substantial (*supra*, pp. 34–35, 63), and the freedom of numerous independent merchants and their potential suppliers is restrained, we believe that exclusive dealing contracts between a supplier and such merchants are illegal *per se* and violate Section 1.

III. The relief ordered by the district court was proper

The judgment of the district court provides relief which is necessary and appropriate to prevent repetition of appellant's unlawful conduct in the future. The court was fully justified in outlawing all exclusive dealing agreements or understandings between appellant and independent retail dealers (pars. IV, V, R. 167–8). As we have pointed out (*supra*, Point I), its findings that such agreements and understandings were and are in effect as to each type of station are amply supported. But even if appellant's attacks on the findings could prevail, the relief awarded would still be wholly justified by the undisputed facts.

Appellant does not deny that the "100% Richfield" policy, which it admittedly adopted in 1938, has been and is being applied in full vigor to the L–O stations, through oral understandings enforced by use of the 24-hour termination clause. It does not deny that during the years immedi-

ately preceding the filing of the complaint herein and for over one year thereafter it had in effect an express full requirements contract as to its 3–C stations.[32] The L–O and 3–C stations constitute over one-half of the service station outlets which are the subject of this action.[33] In addition, the written maximum-minimum provisions and painting provisions presently applicable to both 3–C and 337 stations on their face—and quite apart from the testimony as to their practical effect which appellant disputes—plainly tend, as the district court held, to compel exclusive dealing.[34]

Even if Richfield had entered into illegal exclusive dealing agreements with less than all of the retail outlets for its products, injunctive relief against that practice need not be confined to the particular dealers who hitherto have been tied to Richfield in this manner. This Court has repeatedly recognized that equity need not bar only the travelled roads to illegal objectives, and that

[32] Even if appellant had discontinued its unlawful conduct entirely in 1948, the court's power and duty to order injunctive relief could not be defeated. *Federal Trade Commission* v. *Goodyear Tire & R. Co.*, 304 U. S. 257; *United States* v. *Trans-Missouri Freight Assn.*, 166 U. S. 290, 309, 310. Indeed, even "cessation of an unlawful activity *before* suit does not deprive the court of jurisdiction to provide against its resumption." *United States* v. *Aluminum Co. of America*, 148 F. 2d 416, 448 (C. A. 2). [Emphasis supplied.]

[33] On December 31, 1950, there were 1,343 L–O stations, 261 3–C stations, and 1,361 337 stations (Fdg. 31, R. 155).

[34] See also the covenant against selling competing products within 200 yards of the station, presently contained in appellant's 3–C lease.

"relief, to be effective, must go beyond the narrow limits of the proven violation." *United States* v. *United States Gypsum Company,* 340 U. S. 76, 90; *Timken Roller Bearing Co.* v. *United States,* 341 U. S. 593, 600. See *International Salt Co.* v. *United States,* 332 U. S. 392, 400; *Local 167* v. *United States,* 291 U. S. 293, 299; *Ethyl Gasoline Corp.* v. *United States,* 309 U. S. 436, 461; *Hartford-Empire Co.* v. *United States,* 323 U. S. 386, 409.

Appellant complains of the failure to include in the decree a provision permitting it to sell its products, or those sponsored by it, on the condition that the containers for such products, where furnished by Richfield and marked as such, shall be used solely for Richfield products. There is no basis in the record for a conclusion that Richfield dealers have sought in the past to palm off competitors' products as Richfield's, or are likely to do so in the future. Absent such a showing, it cannot be said that the trial court abused its discretion in refusing to include the provision.[35]

[35] The inclusion of such a provision in the judgment in the *Standard Oil Co. of California* case (see Appellant's Br. 116) is not binding as to the appropriate relief in another case arising on a different record. And there was no consent judgment here which tied the relief to be awarded to the outcome of the *Standard* case. Cf. *Ford Motor Co.* v. *United States,* 335 U. S. 303. Nor does appellant indicate how it will be prejudiced in competition with Standard by the difference in the two decrees, or the precise nature of the "important competitive marketing practices" which Standard may continue to utilize (cf. Br. 116).

Should appellant at any time in the future be injured by deception of the public in this manner, it will of course be free to seek modification.

Appellant also complains of the terms of Paragraph VI of the decree (R. 168) which enjoins use of the 24-hour termination clause in the L–O lease, and permits appellant to terminate its L–O leases only for breach of the express conditions contained therein and upon a minimum of 30 days written notice.

We submit that the mode of relief chosen by the district court is an appropriate method of eliminating the *in terrorem* effect of the unrestricted cancellation power. The record establishes that appellant has frequently used summary termination, or the threat of it, as a principal method of enforcing its exclusive dealing policy (*supra,* pp. 18–28). If appellant remains free to terminate an L–O lease with substantially no notice for any reason (or for no reason), it is obvious that the prudent L–O operator will continue to feel under compulsion to comply with Richfield's known wish that he should handle its products and those sponsored by it exclusively.

Appellant does not suggest how the injunction could have been drawn more narrowly so as to preserve intact its 24-hour termination privilege, and at the same time to prevent the use of that privilege as a coercive weapon to accomplish the illegal result for which it has been used in the

past. It seems plain that an injunction against termination for the reason that the operator has handled the products of competitors would be totally inadequate because it could be so easily evaded and thus would give the operator no assurance that he could safely risk appellant's displeasure. If appellant has unfettered discretion to cancel on any ground except the handling of competitors' products, the L–O operator would reasonably feel that he must not risk antagonizing Richfield by selling the products of other oil companies. For cancellation of a lease could almost always be plausibly based upon some other ground, and contradictory proof of a particular motive is always difficult.

In view of the course of dealings with the L–O operator in which the termination power has been used coercively by appellant, the district court obviously deemed it essential to give him a tenure not resting upon keeping Richfield's goodwill if he was to act with any real independence. Persons who have been intimidated require extra assurance against reprisals if they are to function freely.[26]

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[26] If the L–O lessee is not given complete protection against a constant threat of lease cancellation, such as is given the lessee in paragraph VI of the decree, will not the L–O lessees continue to say to competitive suppliers, as did L–O lessee Locke to a competitive supplier in 1949: "* * * he couldn't see why he should jeopardize himself, why he should handle our products on the outside" (R. 1510)? And will not the L–O lessees continue to act in fear of appellant's sword of

Appellant urges that the effect of the decree is confiscatory (Br. 113–114). As to the 510 L–O stations which Richfield owns in fee, it is said that Richfield is enjoined for the lives of the present operators from obtaining their fair rental value. As to the remaining 833 L–O stations which Richfield leases from other persons and subleases to the operator, it is argued that Richfield is compelled for the duration of the underlying leases to absorb as a penalty the difference between the rents payable by it and the lower rent which the L–O station pays.

There are several answers to these contentions. In the first place, the terms of the lease, including the size of the rental and the express grounds for termination, were written by Richfield, and it can hardly be argued that their continued enforcement is in the nature of a penalty. As to those provisions Richfield is getting that for which it bargained. And it cannot complain of the deletion of a clause which was designed to be and has been the instrument of unlawful ends. When Richfield inserted the 24 hour clause, which the

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Damocles, as did dealer Colmery when he told a competitive supplier: "* * * if the Richfield Oil Company wanted to, there was probably other reasons in my lease so that they could eliminate me from the properties" (R. 1200)? And see R. 964, where a competitive supplier testified that Colmery told him that if he handled Pennzoil, Richfield would find some excuse to get rid of him. And the supplier added that "I get that statement from so many stations, counsel, that I just can't remember where I get them all (*ibid.*).

district court has found to have been inserted and used in furtherance of the illegal purpose of enforcing exclusive dealing arrangements, Richfield took the risk that the clause would be declared void and the other provisions of the lease would remain in force.

Second, antitrust decrees approved by this Court have frequently imposed restrictions upon the use of property which inevitably affect its value to its owners. Divestiture, which requires one to sell what he does not wish to sell, deprives the property owner of one of the basic privileges of ownership.[37] Compulsory patent licensing deprives the patentee of the basic privilege of using his patented invention to the exclusion of all others, and may force the patentee to accept royalties not fixed by himself.[38] For a news gathering service to be forced to accept as subscribers newspapers not of its choice removes one of the basic privileges of businesses other than public utilities.[39] But the relief necessary to terminate illegal conduct and dissipate its consequences is awarded even though some incidental injury is suffered by the violators. Here the contractual right of a lessor to terminate leases has been used to enforce unlawful agreements, and therefore must be limited.

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[37] *Standard Oil Co.* v. *United States*, 221 U. S. 1; *United States* v. *Paramount Pictures, Inc.*, 334 U. S. 131.

[38] *Hartford Empire Co.* v. *United States*, 323 U. S. 386; *United States* v. *National Lead Co.*, 332 U. S. 319.

[39] *Associated Press* v. *United States*, 326 U. S. 1.

Third, if future events should render unduly oppressive the continuation of the leases on their present terms, appellant is free to seek modification of the decree from the district court, which has retained jurisdiction of the cause for just such purposes (Par. X, R. 170). Appellant would also be free at that time to attempt to show to the satisfaction of the trial court that the atmosphere of coercion under which its L–O operators have functioned has been dissipated, and that the market represented by these dealers, which is now closed by appellant's illegal restraints, has successfully been pried open to competition. Cf. *International Salt Co.* v. *United States,* 332 U. S. 392, 401. Here, as in *Lorain Journal Co.* v. *United States,* 342 U. S. 143, the decree is reasonably consistent with the requirements of the case, and modifications, if any, should be left to the informed discretion of the district court "in the light of the entire proceedings and of subsequent events" (*id.* at 157).

CONCLUSION

For the foregoing reasons the judgment should be affirmed.

Respectfully submitted.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1951.

No. 395.

RICHFIELD OIL CORPORATION, *Appellant*,

v.

UNITED STATES OF AMERICA.

APPELLANT'S REPLY BRIEF.

Appellant, Richfield Oil Corporation, presents the following Reply Brief:[1]

For clarity, Richfield's comments concerning the Government's brief will be arranged according to the same plan as in Richfield's opening brief.

I.

THE L. O. STATIONS.

A. Whether the L. O. Stations as Operated by the L. O. Operators are a Legitimate Market for Richfield's Competitors.

Richfield has asserted that the L. O. stations are not a legitimate market for the products of Richfield's competitors but that those stations are merely outlets lawfully controlled by Richfield for sale of its products to a market,

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[1] Our opening brief will be referred to as Rich. Br. The brief of the United States will be referred to as Govt. Br. The Record is referred to as R. Emphasis throughout this brief has been supplied.

i.e., the motoring public. In support of such assertion, Richfield has shown that the underlying reason for the exclusion of employment, agency, and other intimate relationships from the prohibitions of the anti-trust laws is that in the presence of such relationships there is no independent businessman status and no legitimate market or subject matter of competition; that in terms of restraint of trade, the relationship between Richfield and the L. O. operators contains the same attributes as a relationship of agency or employment; and that for purposes of the anti-trust laws, the relationship of the L. O. operators to Richfield more nearly resembles those of agency or employment or other "intimate relationships" rather than that of an independent businessman who is a customer of and part of a market for Richfield and its competitors [Rich. Br., pp. 52-77].

In opposition to such contentions the government advances five arguments. None of them answers Richfield's claims. Each will be dealt with separately.

(1) The government states: "The relationship here involved cannot conceivably be described as that of agency or employment" [Govt. Br. 44]; and the government points out that both *Federal Trade Commission* v. *Curtis Publishing Co.*, 260 U. S. 568, and *United States* v. *General Electric Co.*, 272 U. S. 476, involved agreements between a principal and agents [Govt. Br. 43-4].

That such statements do not answer Richfield's contentions need not be labored. No mention is made by the government of the "intimate relationships" other than employment or agency, referred to in Richfield's brief, which disclose that the area excluded from coverage by the anti-trust laws is broader than that of strict agency or employment. No mention is made by the government of the facts and circumstances bearing upon Richfield's relationship with the L. O. stations and the L. O. operators which clearly demonstrate that such "intimate relationship" is here present and that the L. O. operators are not customers and that

the stations are not a legitimate market for Richfield's competitors.

The government's brief states: "It is not necessary here to consider under what circumstances agreements with a so-called 'agent' may violate the antitrust laws". [Govt. Br. 43] Why the government feels it unnecessary to consider such circumstances is not explained. By avoiding such consideration the government shuts its eyes to the most important legal issue in this litigation with regard to the L. O. stations, which issue was raised in the pleadings before trial [R. 23], in the assignment of errors on this appeal [R. 195], and in Richfield's brief [Rich. Br., pp. 40-45; 52-94].

We respectfully submit that an inquiry into the underlying reason for the exclusion from the prohibitions of the anti-trust laws is not to be avoided because of the government's assertion that the L. O. operators are not strict agents or employees.

(2) The government contends that the L. O. operators "were regarded and functioned as independent businessmen" [Govt. Br. 44]. The statements offered in support of its contention either do not logically support it or are without adequate foundation in the record.

The government first mentions that there was no consignment but a purchase, and that the operators were not paid commissions [Govt. Br. 44]. No comment is made on the showing in Richfield's brief that the incident of the passage of title is not controlling [Rich. Br. 70-73, 77]; nor is any mention made of the numerous factors discussed in Richfield's brief and enumerated on pages 74 and 75 thereof which demonstrate that the L. O. operators are not customers and that Richfield has a continuing economic interest in such stations and the products handled therein, notwithstanding the passage of title to the products.

The government [Govt. Br. 12, 45] contends that the L. O. operators are independent because they "were held out to the general public as independent dealers". Richfield re-

ferred at times in its radio advertising to "your independent Richfield dealer" without indicating any difference between its legal or economic relationships with the 337 and 3-C dealers on the one hand and the L. O. operators on the other. The testimony concerning Richfield's advertising is contained in the record at pages 660-1 and 669-72. It is clear that the advertising of Richfield's products was general.[2] It was not and could not be framed with the precision and nicety of a legal instrument. It did not alter in one iota the economic position or real relationship of the L. O. operators to Richfield.

The government incorrectly suggests that it was Richfield's common practice to tell the L. O. operator that he was an independent businessman. The government's brief [p. 37] states: "In entering into an L-O arrangement, appellant informs the dealer that he is to be an independent businessman". No finding of any such matter was made by

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[2] The testimony in part was:

The Court: That would cover, you know, those pictures in the newspapers of a man in overalls, middle-aged, and quite nice looking, looks as though he was in the First World [fol. 1253] War, and there you say, "This is the type of man who serves you."

The Witness: We refer to them as "Richfield dealers," your Honor, in all of our advertising.

• • •

Q. (by government counsel) So then I take it, Mr. King, Richfield does not conduct an advertising program just for the benefit of one type of dealer among the three types that we have referred to; is that correct?

A. That is correct. Our advertising is intended for all of these operators and dealers.

Q. And in referring to—

The Court: Well, you have an interest in all three types, and, therefore, you do not distinguish, regardless of any legal distinction, between the type of relationship as between you and these three in your advertising, and you treat them all alike.

The Witness: Well, we would be very foolish, your Honor, if we didn't. [R. 660-1]

the District Court and the only testimony concerning it does not justify the generality of the statement or the exaggerated importance claimed for it.[3] In fact, it is clear beyond question that the L. O. operators as a class (notwithstanding isolated exceptions) knew from the matters of which they were informed prior to their being installed in Richfield's stations that they were to be the very opposite of independent businessmen. (For full discussion of such matters, together with appropriate references to record, see Richfield's Brief, pages 14-16).

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[3] Weston, who was employed by Richfield as a merchandiser in Seattle, Washington from 1940 to 1941 and from 1946 to 1949, testified that he took interested prospective L. O. "dealers" to Gilworth, the Seattle Branch Manager, who would "more or less check to see if they had the capital" and "impress on their minds that they were an independent businessman" (R. 973-4).

This isolated testimony is the basis of the government's similar statements at pages 12, 37, 45 and 50 of its brief.

No similar testimony was given by any of the other merchandiser witnesses called by the government and who testified of practices in interviewing and installing prospective L. O. operators (Miller, R. 1006, Minor, R. 746, Pittman R. 870, or Shewbridge, R. 986); nor was there any similar testimony by any other former Richfield employees called as witnesses by the government; nor was there similar testimony by any of the twenty-four present and former L. O. operators called as witnesses by the government; nor was there similar testimony by the managerial witnesses called by Richfield, namely, King (R. 568, 1562) and Dusto (R. 1718). Certainly Weston's testimony cannot support an inference of a common or general practice.

Furthermore, Weston (as well as the other witnesses above referred to) testified that the prospective operators were told of instructions as to hours of operation, cleanliness of station, manner of operation, etc., all of which would indicate to any prospective operator that his status was not to be that of an independent businessman. Footnote 23 on page 50 of the government's brief suggests that testimony similar to that of Weston's was given by government witnesses Bradford, Hurst and Delong. An examination of their testimony does not so indicate.

The government states "When the station was sold, they (the L. O. operators) took any loss on 'approved' as well as 'non-approved' merchandise" [Govt. Br. 45]. The implication that this was a common practice or occurrence as to approved merchandise cannot be supported by the record. There is no such finding by the District Court; and the record is clear that as to approved merchandise, Richfield either arranged for the incoming operator to acquire the same or Richfield itself took back the merchandise [R. 1595-6, 1726, 975].

(3) The government next makes its "both ways" argument. [Govt. Br. 38, 46-7] It contends, first, that under the arrangement between Richfield and the L. O. operator, Richfield has "avoided" and is "relieved" of numerous liabilities which it might have incurred under an agency or employment relationship;[4] and second, that consequently, it must be determined that Richfield has violated the anti-trust statutes. The government states: "Appellant cannot have it both ways", i. e., both non-liability for workmen's compensation insurance, unemployment taxes, etc. on the one hand and non-violation of the anti-trust laws on the other hand.

This argument has no validity and contains an obvious non-sequitur. The suggestion that the areas and relationships covered by the anti-trust laws are defined in terms of relationships not covered by social security tax laws, state workmen's compensation insurance laws, etc. has no foundation. Similarly, no support can be found for the suggestion that the alternative to non-responsibility for such taxes or insurance is the imposition of a liability under the anti-trust laws. One does not follow from the other.

The non-payment by Richfield of workmen's compensation insurance premiums or social security taxes with re-

[4] Any implication in the government's brief that Richfield's purpose in establishing its relationship with the L. O. operators was to avoid or evade liabilities is without any support in the record [Rich. Br. p. 76].

gard to the L. O. operators does not make independent businessmen of persons who are not otherwise so, nor does it transform into a market what is otherwise merely an outlet to a market.

(4) The government's brief [pp. 47-8] refers to cases stating that common ownership or control of contracting or conspiring corporations does not liberate them from the impact of the anti-trust laws, citing *Timken Roller Bearing Company* v. *United States*, 341 U. S. 593, 598; *Kiefer-Stewart* v. *Seagram & Sons*, 340 U. S. 211, 215; *United States* v. *Yellow Cab Company*, 332 U. S. 218, 227. The inapplicability of these cases and their holdings to the case at bar is discussed in Richfield's brief [pp. 91-3]. The language concerning common ownership and control which was used in the *Yellow Cab* case (and which was thereafter referred to in the *Kiefer-Stewart* and *Timken* cases) was explained as follows in *United States* v. *Columbia Steel Co.*, 334 U. S. 495, 523:

> "A subsidiary will in all probability deal only with its parent for goods the parent can furnish. That fact, however, does not make the acquisition invalid. *When other elements of Sherman Act violations are present*, the fact of corporate relationship is material and can be considered in the determination of whether restraint or attempt to restrain exists. That this is the teaching of the Yellow Cab case is indicated by the following quotation:
>
> "'And so in this case, the common ownership and control of the various corporate appellees are impotent to *liberate* the alleged combination and conspiracy from the impact of the Act. * * *'"

Since the L. O. stations are not a legitimate market and the L. O. operators are not independent businessmen, it cannot be said that "other elements of Sherman Act violations are present".

(5) The government asserts [Govt. Br. 50-2] that the fact that Richfield "created" the majority of the L. O.

stations (in excess of 81% thereof) does not give Richfield the right to impose on their operators agreements restraining trade. Richfield has never contended that the reason the L. O. stations do not constitute a market is that Richfield created them. Richfield's contention of the absence of a legitimate market is based on all of the attendant facts and circumstances bearing on its relationship with the L. O. operators. The true significance of Richfield's creation of more than 81% of the L. O. stations is explained in Richfield's opening brief [p. 94].

Finally, it may be noted that the government's brief does not mention or dispute Richfield's contention that the District Court erred in concluding (1) that the issues here involved had been determined in *Standard Oil Company of California* v. *United States*, 337 U. S. 293 [Rich. Br., pp. 78-81], and (2) that the existence of a lease between Richfield and the L. O. operator is determinative that the operator is an independent businessman [Rich. Br., pp. 82-87]. Those two erroneous conclusions are the foundation and support for the District Court's decision of illegality of the L. O. stations. [Opin. R. 71, 77-90]

B. Whether the Restrictions on the L. O. Operators are Unreasonable Under Sec. 1 of the Sherman Act and Whether the Requirements of the Qualifying Clause of Sec. 3 of the Clayton Act Have Been Met.

SHERMAN ACT, SEC. 1

Richfield's brief [95-104] demonstrates that even if it be determined that the relationship between Richfield and the L. O. operators is such that the restrictions are cognizable under the Sherman Act, there nevertheless is no showing of unreasonableness.

The government seeks to justify the total failure of proof of unreasonableness by contending that exclusive dealing contracts are unlawful per se [Govt. Br. 65-8]. It is clear beyond dispute that exclusive dealing contracts are not un-

lawful per se. *United States* v. *Columbia Steel Co.*, 334 U. S. 495, 522-4.[5]

The government's brief [p. 67] suggests that the *Columbia Steel* case is limited to "the permissibility of a particular vertical integration. Here appellant does not seek to integrate, but to restrain the trade of 2,965 independent businessmen." There are two ready answers to this. First, the opinion in the *Columbia Steel* case refers to more than vertical integration.[6] Second, a similar contention by the government was emphatically rejected in *Appalachian Coals, Inc.* v. *United States*, 288 U. S. 344, 376.

The government suggests [Govt. Br. 67] that the *Yellow Cab* case, involving a conspiracy and intent to monopolize, would justify a holding of illegality per se since Richfield intended to confine the operators of the L. O. stations to Richfield's products. The supposed analogy fails. There is no charge here of monopoly or intent to monopolize. There is no intention here other than that implicit in the making of any exclusive dealing arrangement, which as pointed out above is not illegal per se notwithstanding such intention.

---

[5] The government suggests that since the *Columbia Steel* case approved the holding of the *United States* v. *Yellow Cab Co.*, 332 U. S. 218, the *Columbia Steel* case cannot be considered to have determined that "exclusive dealing contracts were never unreasonable per se". [Govt. Br. 66] This interpretation of the *Columbia Steel* case is strained indeed. The opinion in that case states:

> "We do not construe our holding in the Yellow Cab case to make illegal the acquisition by the United States Steel of this outlet for its rolled steel *without consideration of its effect on the opportunities of other competitor producers to market their rolled steel.*" 334 U. S. 495, 521-2

[6] The Court said:

> "Exclusive dealings for rolled steel between Consolidated and United States Steel, brought about by vertical integration *or otherwise*, are not illegal, at any rate until the effect of such control is to unreasonably restrict the opportunities of competitors to market their product." 334 U. S. 495, 524.

CLAYTON ACT, SEC. 3

Richfield has asserted that the District Court's determination of substantiality under Section 3 of the Clayton Act cannot be supported under the facts of this case. [Rich. Br., 104-7] Richfield there showed the vital factual differences between this case and *Standard Oil Company of California* v. *United States*, 337 U. S. 293; and Richfield demonstrated that the L. O. stations do not constitute a substantial share of the line of commerce.

The government argues that Richfield's distinction is frivolous. It admits that the test of substantiality is the "*share* of the line of commerce affected". [Govt. Br. 63] It attempts to show substantiality regarding the 1,343 L. O. stations by combining with them the 1,622 independent dealer stations. Thus it states:

> "Here 2,965 retail outlets subject to some 7,500 unlawful agreements, *oral* and written, handle, etc."[7] [Govt. Br. 63]

The 1,622 dealer stations are included in the total on the government's stated premise that each of them is the subject of an oral exclusive dealing agreement. While it is true that the District Court found that there exists an oral exclusive dealing agreement with each of the 337 and 3-C dealers [Finding 33, R. 155], Richfield demonstrated in its brief [pp. 119 & 125-6] that all findings of the existence of oral contracts with independent dealers are clearly erroneous, there being no evidence whatsoever showing an oral agreement with *any* of them. As discussed in Part II of this Reply Brief the government's showing in support of its suggestion that "the essence of the challenged findings" [Govt. Br. 53] may be sustained is wholly inadequate. Un-

[7] The "7,500 unlawful agreements" is a synthetic number arrived at by including in the total all the various written agreements applicable to any particular station and an assumed additional oral agreement with each of the 2,965 stations. See Findings 32 and 33, R. 155.

der these circumstances, the government's use of the dealer stations to bolster the charge of substantiality concerning the L. O. stations is unjustified.

There is no validity in the government's suggestion that Richfield's contention would render Section 3 of the Clayton Act "virtually nugatory in respect of requirements contracts because it would apply only to the very largest suppliers in an industry". [Govt. Br. 64] Richfield has asserted only that in determining substantiality under the rule of the *Standard Oil* case, all factors pertinent to the share or proportion of the affected line of commerce be considered. As stated in the *Columbia Steel* case (334 U. S. 495, 528), "The relative effect of percentage command of a market varies *with the setting in which that factor is placed*".

C. Whether the Relief Ordered by the District Court was Proper.

Richfield has asserted that the injunctive provisions relating to the L. O. stations are unduly onerous in three respects [Rich. Br. 108-116].

Richfield's principal complaint was against Paragraph VI of the judgment which forbids Richfield's terminating any lease on an L. O. station (held by the District Court to be a month to month tenancy) except for breach by the L. O. operator of the written covenants contained in the lease.

The government attempts to justify this arbitrary, punitive, and confiscatory provision by stating that it eliminates "the *in terrorem* effect of the unrestricted cancellation power". [Govt. Br. 71-5] Beyond stating that it is difficult to prove that the motive for the cancellation of an L. O. lease may be the violation by an L. O. operator of restrictions against exclusive dealing [Govt. Br. 72], the government advances no reason why Richfield should be prohibited from terminating the "month to month tenancy" of an L. O. operator (even when the latter is handling Richfield's products exclusively) for any other business reason

such as unprofitableness, desire to use the land for other purposes, etc. The confiscatory nature of the decree shown by Richfield to constitute a fine in an amount not less than $485,000 per year [Rich. Br. 112-114] is passed off lightly by the government as "incidental injury". [Govt. Br. 74]

Richfield also complained of the failure by the District Judge to include in the Richfield decree a qualification, similar to that inserted by him in his decree in the *Standard Oil Company of California* case, so as to permit Richfield to require that Richfield's pumps, tanks and other receptacles be confined to its products. [Rich. Br. 115-16] The government's brief [p. 70] states that Richfield has not indicated sufficiently the precise nature of the important competitive market practices which Standard, Richfield's largest competitor, may continue to utilize. By Paragraph IX of its decree Standard was granted immunity and given a license to continue (both in its own stations, if any, and in stations of independent dealers comparable to the 337 and 3-C stations) the precise practices which Richfield is enjoined from following in its own L. O. stations. The prejudice to Richfield from a competitive standpoint is self-evident. The absence of a showing of "palming off" referred to in the government's brief [p. 70] has no relevance.[8]

II. THE DEALER STATIONS.

A. Whether the Government Proved Its Charges of Oral Exclusive Dealing Contracts and Coercion in Regard to the Dealer Stations.

Richfield's brief demonstrates, we earnestly believe, that the challenged findings of the District Court are clearly erroneous. Richfield's brief [pp. 117-47] shows that there is an almost total absence of evidence or testimony to prove the essential charges of illegality contained in the complaint, i.e., the existence of oral exclusive dealing agreements with each of the 337 and 3-C dealers [Compl. Par.

[8] The factor of "palming off" was not the basis for the inclusion of the qualifying clause in the *Standard* decree (see discussion in Richfield's brief, p. 116, footnote 68).

17-19, R. 6-7] and of coercion to compel dealers "to enter into and adhere" to such oral agreements [Compl. Par. 20, R. 7-8]. The District Court's determination of illegality was predicated upon its findings of the existence of oral exclusive dealing contracts as alleged. (Its findings pertaining thereto are numbers 5, 20, 21, 26, 27, 28, 30, 33, 34, 39, 43, 45, 46, 47 and 48 all of which are attacked in Richfield's assignment of error II-1-a, R. 205.) The government's brief so approaches the problem. The question to be decided in this case, therefore, is whether the findings of oral agreements can be sustained.[9]

The government's brief *first* attempts to support the findings (a) by pointing out some slight additional testimony not mentioned in Richfield's brief and (b) by advancing certain arguments from which it contends that Richfield had a "policy" which the government implies could furnish support for the Court's findings of the existence of oral agreements. *Second*, the government's brief suggests that independent of the findings of oral exclusive dealing agreements, the judgment of illegality as to the dealer stations may be supported on the ground that (a) the written specified-quantity sales contracts are unlawful under its so-called "unlikely" doctrine and (b) that such contracts when combined with painting agreements are illegal per se without regard to the effect on competitors. Each contention will be separately dealt with.

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[9] For illustration, in Finding 21 [R. 149] the District Court found that "Richfield has from March 12, 1937 continuously to the present time entered into written and oral agreements and understandings with the independent operators of the 337 dealer stations. * * * The oral agreements relate to the handling of petroleum products and automotive accessories." In Finding 33 [R. 155] the Court found that Richfield had entered into such an "oral agreement" with *each* of such 337 dealers. Conclusions of Law 2 to 9, inclusive [R. 163-4] recite that the basis of the violation of the Sherman and Clayton Acts is the "written and oral contracts, agreements and understandings".

FIRST: *Government's Contentions Concerning the Findings.*

A. *Additional testimony.* The only testimony or evidence pertaining to the dealer stations referred to in the government's brief and not referred to in Richfield's brief are (a) Ex. 9-A (R. 284), a memorandum written and pertaining to an event in 1940 [Govt. Br. 28], (b) certain of the language of former distributor Duarte [Govt. Br. 29], (c) some of the testimony of former employee Bradford [Govt. Br. 30 & 58], and (d) some of the language of former salesman Scollard [Govt. Br. 32].[10] In the face of Richfield's vigorous attack on such findings, coupled with its itemization of the evidence relevant thereto, it is reasonable to suppose that the government's brief contains reference to all evidence in the record which it believes could support such findings and refute Richfield's attack.

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[10] The limited areas and times to which the testimony of these witnesses relates are shown in Richfield's opening brief at the following pages: Duarte, p. 129, footnote 78, and p. 131, footnote 81; Bradford, p. 128, footnote 78, and p. 134, footnote 83; Scollard, p. 129, footnote 78.

We suggest that a failure to recognize such limitation of the scope of such testimony has led the government to ascribe thereto an exaggerated significance. While Bradford's testimony was limited to the area of Portland, Oregon, during the period prior to 1947, his testimony (which stands alone for the following proposition in a record of over 1200 pages of testimony):

> "Q (By government counsel) * * * The estimates of the maximum and minimum quantities were based on the premise the dealer would buy all of his gasoline from Richfield?
>
> A. Yes." [R. 1108]

is expanded in the government's brief to suggest a general practice by Richfield apparently unlimited as to time or area:

> "The maxima and minima were set by appellant and there was uncontradicted testimony that they were set on the assumption that the dealer would buy all his requirements from Richfield." [Govt. Br. 56]

We respectfully submit that such additional testimony and evidence falls far short of supplying the additional evidentiary support necessary to sustain these critical findings.

B. *Argument re "100% Richfield" policy.* It is the burden of the government's argument [Govt. Br. 38-39, 52-60] that Richfield has continuously, from 1938 to the time of trial, had a "policy" (referred to throughout its brief as a "100% Richfield" policy) relating to all types of stations, and that the existence of such "policy" supports the findings of oral exclusive dealing agreements with each of the existing 337 and 3C dealers.

We submit that the contention of a continuous "100% Richfield" policy starting from the "split-pump" letter of 1938, which died and became meaningless prior to World War II [R. 659, 1636-7], and continuing with regard to the 337 and 3C dealer stations up to the time of trial is fanciful and cannot be supported.[11]

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[11] (a) The Government's chief contention is that Richfield's requirement of exclusive dealing in its L. O. stations, which did continue from 1938 to the time of trial, is the same "100% Richfield" policy, the phrase used in the 1938 letter concerning independent dealer stations. This is nothing but a play on words.

The 1938 split-pump letter concerned only the independent dealer stations, not Richfield's L. O. stations. The letter states: "It will be 100% Richfield or we will withdraw from such accounts, if we have any left, that are now on a split-pump basis". [Ex. 9, R. 284, 658]

The key to the letter's meaning is the word "withdraw". In 1938 Richfield withdrew from forty to fifty dealer accounts [R. 1635-6], i.e., it discontinued sales to those independent dealers. Richfield does not withdraw from any of its own L. O. stations. If the operator thereof handles competitive oil or accessories, Richfield removes the operator and installs another in his place.

The split-pump policy of 1938 cannot be given a free ride up to the time of trial on the vehicle of proof of an admitted and entirely different policy, i. e., Richfield's practices with its L. O. stations.

(b) The government's additional contention concerning the "100% Richfield" policy is based upon the requirements contracts

If the record could bear any reasonable inference that the "split-pump policy" of 1938 (which related only to gasoline and not to any other petroleum products or to automotive accessories, [Finding 28, R. 154]), had been continued to the time of trial, such inference still could not support any finding of oral agreements between Richfield and any dealers without a showing, not here present, of knowledge by the contracting dealers of such policy [Rich. Br. 136-8]. There is no showing in the record of knowledge by any dealer of any such policy.

SECOND: *Government's Contentions of Unlawfulness of Fixed Quantity Contracts.*

A. *The "Unlikely" Doctrine.* After pointing out that the dealers' obligations under the sales contracts were set at

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with the 3-C dealers during the period 1945 to August, 1948. That the requirements contracts were limited to the comparatively few 3-C dealers (182 at one time) and were never applicable to the 337 dealers or their stations need not be labored. (See Richfield's brief, pages 19-24, 31-33 for a full discussion of this matter and of the fact of and reasons for the total discontinuance of requirements contracts with even the 3-C dealers in August, 1948.)

The 200-yard clause contained in the lease from the 3-C dealer to Richfield [Ex. 4, R. 262, 567] has no relevance to the problem of exclusive dealing. Examination of the exhibit shows that the clause refers to property, if any, of the lessor other than the leased premises. No testimony concerning the application, use or effect of this clause was offered by the government at the trial.

(c) The government argues there is significance to Richfield's failure in 1948 to tell the dealers that "the '100% Richfield' policy was no longer applicable and that they were free to handle and display competing goods." [Govt. Br. 39, 55].

There was no occasion to tell the 337 dealers of the elimination of a restriction which had never existed.

The elimination of the restriction of the requirements clause in the 3C contract was called to the attention of the 3C dealers by the alteration of their contracts. [Stip. of Facts, Ex. A, R. 402].

(d) Finally, the government suggests support from the use of painting agreements but it is clear that painting agreements have neither had the purposes nor effect ascribed to them. (See Richfield's brief, pages 22-23, 140-2.)

about 80% of the dealers' anticipated requirements,[12] the government states: "* * * such a contract renders it *unlikely* that the operator will ever be in a position to buy competing products, except sporadically and occasionally." [Govt. Br. 56]

We respectfully submit that if a contract is deemed to be violative of either the Sherman or Clayton Acts upon speculation that it is "unlikely" that the purchaser will be in a position to buy competitive products, no one may safely enter into commercial transactions.

B. *The Illegal per se Doctrine.* The government's brief suggests that a written maximum-minimum sales contract, when used in connection with a painting agreement of the nature here involved (i. e., providing for repayment by the dealer to the supplier of painting costs expended in the event the dealer fails to purchase the agreed specified quantity) is unlawful per se. The government's brief states "In addition, the written maximum-minimum provisions and painting provisions presently applicable to both 3-C and 337 stations *on their face—and quite apart from the testimony as to their practical effect which appellant disputes*—plainly tend, as the district court held, to compel exclusive dealing." [Govt. Br. 69]

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[12] Although the District Court found that the agreed quantities "are usually fixed by it [Richfield] at 80% of the anticipated requirements of the independent operator" [Finding 19, R. 148], it is not to be assumed either that the contract calls for 80% of the dealer's requirements, as suggested in the government's brief [p. 56], or that the specific quantity which is inserted in the contract is intended to represent 80% of the dealer's anticipated requirements. The percentage is used, not as a target or as a "yardstick" [Gov't Br. 67], but as an outside limit.

The sales contracts contain provision not for a percentage of the dealers' requirements, but for a specified quantity. The quantity is determined by negotiation between the dealer and Richfield's salesmen, with the qualification that the negotiated quantity which the dealer obligates himself to purchase is not permitted to exceed 75% of the dealer's past known sales. During the period August, 1948 to the spring of 1950 the instructions referred to 85% as a maximum instead of 75%. For a full discussion, together with appropriate references to the record, see Richfield's brief, pp. 20-22, 31-33.

Since, as pointed out above, an entire requirements agreement which prevents the dealer from buying elsewhere is not illegal per se, it is difficult to perceive how a specified quantity contract could have such character.

Richfield respectfully submits that the judgment appealed from should be reversed.

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No. 395

RICHFIELD OIL CORPORATION,

Appellant,

vs.

UNITED STATES OF AMERICA.

PETITION FOR REHEARING.

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TEXTBOOKS

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IN THE

Supreme Court of the United States

October Term, 1951.

No. 395

RICHFIELD OIL CORPORATION,

Appellant,

vs.

UNITED STATES OF AMERICA.

PETITION FOR REHEARING.

Appellant, Richfield Oil Corporation (herein called "Richfield"), presents this petition for a rehearing of the above entitled cause on the grounds hereinafter stated.

Basis of the Supreme Court's Decision.

On April 21, 1952, the Supreme Court affirmed the judgment of the District Court on the ground that "the issues raised by this appeal are substantially the same as those decided in *Standard Oil Company v. United States,* 337 U. S. 293, 1949."

Richfield respectfully submits that even if the *Standard* case is held to be the basis of the determination of illegality of Richfield's restrictions on the L. O. operators, nevertheless this appeal has raised two additional vital issues[1]

[1]These issues were raised in Richfield's assignments of error 11(c), 11(d) and 12 [R. 204-5] and were discussed in Richfield's Op. Br. 46-7, 108-116.

regarding the confiscatory and discriminatory nature of the injunction in this case, neither of which issues was decided in the *Standard* case in a manner adverse to Richfield's contentions. Richfield submits further that consistency with the *Standard* decision as well as regard for this Court's "obligation"[2] to correct erroneous provisions of anti-trust decrees requires either reversal or modification of the District Court's judgment.

I.

Confiscatory and Punitive Provisions of Decree.

Each L. O. lease [Ex. 1G, R. 251] contains provision for termination by either Richfield or the operator on twenty-four hours' notice, with or without cause. None of the leases provides for a fixed term or for a stated expiration date; and accordingly, each will continue until terminated by notice.

Paragraph VI of the judgment (copied in Appendix "A" hereto) enjoins Richfield from exercising for any reason the twenty-four hour termination clause and from cancelling any L. O. lease on less than thirty days' written notice. It further enjoins Richfield from exercising

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[2]In *United States v. United States Gypsum Company*, 340 U. S. 76, 89, the Court said:

> "Notwithstanding our adherence to trial court responsibility in the molding of a decree as the wisest practice and the most productive of good results, we have never treated that power as one of discretion, subject only to reversal for gross abuse. Rather we have felt an obligation to intervene in this most significant phase of the case when we concluded there were inappropriate provisions in the decree."

such "30-day cancellation privilege" excepting *"only for a breach of any of the written covenants contained in any written lease"* with an L. O. operator.

(a) *Paragraph VI of the Richfield judgment is both punitive and confiscatory. It violates the standards established for decrees in anti-trust cases, i. e., "effective and fair enforcement, not punishment" or "penalties."* (*United States v. National Lead Co.*, 332 U. S. 319, 338 (1947); *Hartford-Empire Co. v. United States*, 323 U. S. 386, 409, 414 (1945).)

The effect of this decree will be to deprive Richfield of the right of terminating these "month to month" tenancies for any reason or purpose however wholly divorced from that of removing an operator who fails or refuses to handle Richfield's products in a station owned by Richfield. The decree changes the lease from one terminable by either party on twenty-four hours' notice to one enduring for such period as may be selected by the particular L. O. operator, for his lifetime if he so elects.

The confiscatory nature of the decree is obvious from the fact that the rental payable by any L. O. operator is substantially (at least 33⅓%) less than the fair rental value of the station.[3] Richfield is required to continue to lease its stations to any operators who choose to comply with the written covenants of the lease (which are limited

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[3]See Statement of Facts in Rich. Op. Br., 17-18, containing appropriate references to the record.

largely to maintenance of the premises in repair and payment of the relatively nominal rent) and thus is required to "dedicate," to the extent of the loss of fair rental value, the stations to the L. O. operators. This result is directly contrary to this Court's holding in *Hartford-Empire Co. v. United States,* 323 U. S. 386, 414, and is tantamount to a fine on Richfield of not less than $485,000.00 per year (Rich. Op. Br., 112-113).

(b) *The validity of such injunction was not an issue either raised or decided in the Standard case.*

The judgment (by the same District Court) in the *Standard* case contained no comparable injunction.[4] Standard was merely enjoined, *subject to the emasculating qualification discussed in Point II hereinafter,* from enforcing the exclusive dealing provisions in any of its contracts or agreements [Par. VI of the *Standard* judgment]. The judgment stated that the determination of illegality did not extend to other and separable provisions of Standard's agreements or subleases [Pars. IV and V of the *Standard* judgment]. Standard *was not* enjoined from exercising, freely and without limitation, any termination privileges contained in any of the 1800 subleases there involved.[5]

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[4]Appendix B to this petition contains a copy of the judgment in the *Standard* case taken from the Transcript on Appeal to the United States Supreme Court, No. 279, Oct. Term, 1948, pp. 188-193.

[5]Standard's contracts were for varying specified terms or from year to year. The year to year instruments were terminable every six months upon thirty days' advance notice. (*Standard Oil Company of California v. United States,* 337 U. S. 293, 296.)

(c) *The injunction, as framed, is contrary to this Court's decision in the Standard case.*

The Court there recognized the propriety of Standard's making agents or employees of former independent service station dealers.[6] Nevertheless, by this injunction as framed, Richfield will be enjoined from terminating the L. O. leases to install in stations owned and built by it either salaried employees or agents.

II.

Richfield's Competitive Disability Resulting From Differences in Standard and Richfield Decrees.

Not only does the Richfield decree in effect confiscate Richfield's L. O. stations with no comparable treatment to any of Standard's stations, however operated, but the District Judge further refused to include in the Richfield decree any provision similar to the exculpatory paragraph

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[6]The Court said (337 U. S. 293, 310):

". . . Before the system of requirements contracts was instituted, Standard sold gasoline through independent service-station operators as its agents, and it might revert to this system if the judgment below were sustained. Or it might, as opportunity presented itself, add service stations now operated independently to the number managed by its subsidiary, Standard Stations, Inc. From the point of view of maintaining or extending competitive advantage, either of these alternatives would be just as effective as the use of requirements contracts, although of course in so far as they resulted in a tendency to monopoly they might encounter the anti-monopoly provisions of the Sherman Act. See United States v. Aluminum Co. of America, 148 F. 2d 416 (CCA(2) Cir.)."

During the oral argument of this cause on April 2, 1952, counsel for the government, the Hon. Asst. Attorney General, advised the Court in response to questions by the Chief Justice and by Mr. Justice Jackson that if the L.O. operators were employees of Richfield, the anti-trust laws would not apply.

in the *Standard* judgment.[7] Paragraph IX expressly permits Standard to continue to require exclusive dealing in Standard's products in all equipment owned by Standard whether located in stations owned by Standard or by the service station dealers themselves and regardless of whether the relationship between Standard and the dealer is that of supplier and customer or principal and agent or otherwise.

The District Court denied Richfield's motion for a similar provision [R. 192-3] even to the limited extent of Richfield's equipment located in stations owned by it. These stations were established by Richfield because of its inability to compete successfully for the business of the established independent dealers (Rich. Op. Br., 8-9, 12). This arbitrary ruling, which subverts the purpose of the anti-trust laws by using them as a supposed justification to prevent Richfield from competing, is the basis of assignment of error No. 12 [R. 204]. This issue (discussed in Rich. Op. Br. 115-16, and in Rich. Rep. Br., 12) could not have been raised or decided in the *Standard* case.

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[7]The decree in the *Standard* case contains the following provision:

"IX.

"Nothing contained in this judgment shall enjoin or restrain either defendant from selling or contracting to sell petroleum products and/or automotive accessories including such products as are sponsored by defendants, to independent dealers on the condition that any pump or tank or other container or receptacle for such products, furnished by defendant and marked as such to an independent dealer, shall be used solely for the storing, handling or dispensing of defendant's petroleum products and to prescribe by agreement or regulations not inconsistent with the provisions of this decree, for the stortage, handling, or dispensing of such products." (See Appendix B to this petition.)

If the *Standard* case determines the issues in this case,[8] then the decree against Richfield should not be more onerous than that framed by the same District Judge against Standard. Standard operates throughout Richfield's marketing area, is much larger than Richfield and is Richfield's chief competitor. A decree which severely penalizes Richfield to the competitive advantage of Stand-

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[8]Petitioner respectfully submits that no other decision of the Supreme Court or any inferior Court has ever determined illegality under the anti-trust laws under facts or circumstances here involved disclosing, insofar as the L. O. operators are concerned, a relationship far removed from that of supplier and customer. All prior cases involving comparable relationships have determined there was no violation of the anti-trust laws.

Federal Trade Commission v. Curtis Publishing Co., 260 U. S. 568 (1923);

United States v. General Electric Co., 272 U. S. 476 (1926);

Appalachian Coals, Inc. v. United States, 288 U. S. 344, 360, 361 (1933);

Curtis Publishing Co. v. Federal Trade Commission, 270 Fed. 881 (C. C. A. 3, 1921);

Pictorial Review Co. v. Curtis Publishing Co., 255 Fed. 206 (D. C. N. Y., 1917).

The *Standard* case did not change the law established by the cases above listed. The *Standard* case dealt with the simple relationship of supplier and customer; and the customer was both assumed by the Court and acknowledged by the parties to be "an independent service station dealer." Whether the L. O. operators are "independent service station dealers" was not an issue in the *Standard* case but was the primary issue in the Richfield case. (Rich. Op. Br., 78-81.)

Petitioner submits further that the *Standard* case did not decide, as did the District Court here, that fixed quantity contracts (providing for quantities substantially less than the purchasers' requirements) violate the anti-trust laws even when used in connection with painting agreements providing for reimbursement by the purchasers of painting costs if they fail to purchase the specified quantities. See discussion of the *Standard* case in Lockhart and Sacks', "The Relevance of Economic Factors in Determining Whether Exclusive Arrangements Violate Section 3 of the Clayton Act," 65 Harvard Law Review 913 (April, 1952), especially at 920, where this aspect of the District Court's decision in the *Richfield* case is discussed.

ard demonstrates a gross abuse of discretion.[9] A showing of a "gross abuse of discretion" is beyond that necessary to require intervention by this Court (see footnote 2 above).

Richfield respectfully urges that this petition for a rehearing be granted and that the judgment of the District Court be, upon further consideration, reversed.

Respectfully submitted,

ROBERT E. PARADISE,
WILLIAM J. DE MARTINI,
Attorneys for Petitioner.

KRYSTAL & PARADISE,
Of Counsel.

Certificate of Counsel.

The undersigned counsel for the above named petitioner do hereby certify that the foregoing petition for a rehearing of this cause is presented in good faith and not for delay.

ROBERT E. PARADISE,
WILLIAM J. DE MARTINI.

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[9]This Court has recognized the wisdom of formulating anti-trust decrees in such fashion as to preserve the competitive abilities of component members of an industry. (*Ford Motor Co. v. United States,* 337 U. S. 303 (1948).)

APPENDIX "A."

Paragraph VI of the Judgment provides as follows:

"Richfield, its successors or assigns, its officers, directors, agents, representatives, and all persons and corporations acting or claiming to act on its behalf, are hereby perpetually enjoined from exercising the 24-hour termination clause contained in any lease which it now has with or which is in effect between itself and any independent dealer operating a retail outlet under an L-O type of arrangement with defendant, and is perpetually enjoined from cancelling any lease which it now has with or which may be in effect between itself and any independent dealer operating a retail service station under the L-O type of arrangement on less than 30-days' written notice to any such dealer. Such 30-day cancellation privilege may be exercised by defendant only for a breach of any of the written covenants contained in any written lease entered into between Richfield and an indpendent dealer operating a retail outlet under the L-O type of arrangement and by written notice sent by registered mail to such dealer advising him of such alleged breach and notice of cancellation therefor. A copy of any such written notice of cancellation shall be sent by registered mail to the Attorney General of the United States or to his duly authorized representative designated by the Attorney General in writing to Richfield at the time said written notice of cancellation is sent to such dealer by defendant." [R. 168.]

APPENDIX "B."

Final Judgment in the *Standard* case, taken from the Transcript on Appeal to the United States Supreme Court, No. 279, Oct. Term, 1948, pages 188-193:

IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION.

Honorable Leon R. Yankwich, Judge.

No. 6159-Y

UNITED STATES OF AMERICA, Plaintiff

v.

STANDARD OIL COMPANY OF CALIFORNIA AND STANDARD STATIONS, INC., Defendants

FINAL JUDGMENT—Filed June 30, 1948

The court having rendered its opinion herein on June 7, 1948; having duly considered the proposals of the parties as to its judgment, and having filed its findings of fact and conclusions of law, wherein the defendants herein were found to have violated Section 1 of the Act of Congress of July 2, 1890, as amended, commonly known as the Sherman Act, and Section 3 of the Act of Congress of October 15, 1914, as amended, commonly known as the Clayton Act,

It is hereby ordered, adjudged, and decreed as follows:

I

As used herein, "Standard" refers to the defendant Standard Oil Company of California; "Standard Stations" refers to the defendant Standard Stations, Inc.

As used herein, the term "retail outlet" refers to any [fol. 348] service station or garage at which "petroleum products" and/or "automotive accessories" manufactured or "sponsored by" defendant Standard, or Standard Stations are sold or distributed by an "independent dealer."

As used herein, the term "independent dealer" refers to the operator of any "retail outlet who operates such retail outlet as an independent business enterprise and not as an employee or agent of defendant Standard or Standard Stations.

As used herein, the term "petroleum products" refers to products obtained or manufactured from natural gases or crude oil by any process and sold or used as a fuel or lubricant for automotive vehicles, together with miscellaneous oils and compounds derived from such natural gases or crude oils and designated for various specific uses and includes such petroleum products as are manufactured or "sponsored by" defendants and sold by defendants "Standard" or "Standard Stations" at any retail outlet operated by said defendants or either of them.

As used herein, the term "automotive accessories" refers to replacement parts and articles other than "petroleum products" used on or in the servicing or repairing of automotive vehicles and includes tires, tubes, batteries, spark plugs, oil filters, oil filter cartridges, fan belts, battery cables, auto lamp bulbs, fuses, windshield wipers and blades, tire repair and vulcanizing kits, anti-freeze preparations, tire chains, waxes and polishes and other like items and includes such "automotive accessories" as are manufactured or "sponsored by" defendants and sold by defendants "Standard" or "Standard Stations" at any retail outlet operated by said defendants or either of them.

The term "sponsored by," as used herein, refers to petroleum products and/or "automotive accessories" which are not manufactured or produced by defendants "Standard" and/or "Standard Stations."

II

Defendants Standard and Standard Stations have entered into contracts which unreasonably restrain interstate trade and commerce in petroleum products and automotive accessories in violation of Section 1 of the Act of Congress of July 2, 1890, as amended, 26 Stat. 209; 15 U. S. C. 1, [fol. 349] commonly known as the Sherman Act.

III

Defendants Standard and Standard Stations have entered into contracts which substantially lessen competition and tend to create a monopoly in the sale and distribution of petroleum products and automotive accessories in violation of Section 3 of the Act of Congress of October 15, 1914, as amended, 38 Stat. 731; 15 U. S. C. 14, commonly known as the Clayton Act.

IV

All of the provisions of any Dealer Agreement (Government's Exhibit No. 1), Distributor Agreement (Government's Exhibit No. 2), Petroleum Products and Equipment Agreement (Government's Exhibit No. 3), Dealer Agreement TBA (Government's Exhibit No. 4), Sublease Agreement (Government's Exhibit No. 5), and all provisions of like or similar import or effect either expressed or implied in any other agreement or instrument between defendants Standard and/or Standard Stations and any independent dealer which contain the condition, agreement or understanding that said independent dealer shall pur-

chase or acquire for sale all his requirements of petroleum products and/or automotive accessories which are used or sold or bought to be used or sold by said independent dealer at a retail outlet from defendants, or either of them ,are hereby adjudged unlawful and declared illegal and void. This declaration of illegality does not extend to other and separable provisions of said agreements or subleases which do not contain any such or similar condition, agreement or understanding.

V

All of the provisions of any oral agreement, arrangement or understanding between defendants Standard and/or Standard Stations and any independent dealer which contain the condition, agreement, or understanding, expressed or implied, that said independent dealer shall purchase or acquire for sale all his requirements of petroleum products and/or automotive accessories which are used or sold, or bought to be used or sold by said independent dealer at a retail outlet from defendants, or either of them, [fol. 350] are hereby adjudged unlawful and declared illegal and void. This declaration of illegality does not extend to other and separable provisions of any agreements or subleases which do not contain any such or similar condition, agreement or understanding.

VI

The defendants Standard and Standard Stations, their successors or assigns and their officers, directors, agents, representatives, and all persons or corporations acting or claiming to act on their behalf be and they are hereby perpetually enjoined from entering into, or enforcing the provisions of any contract, agreement, or understanding, written or oral, expressed or implied, with any independent

dealer or from inducing or compelling, or attempting to induce or compel, by any means whatever, any independent dealer to enter into any contract, agreement, or understanding, written or oral, expressed or implied, which requires:

(a) an independent dealer to secure all of his requirements of petroleum products from defendants or either of them or which prevents him from handling or acquiring for sale petroleum products from sources other than the defendants;

(b) an independent dealer to secure all of his requirements of any one or more automotive accessories from or through defendants or either of them, or which prevents him from handling or acquiring for sale any automotive accessories from sources other than defendants.

VII

Defendants Standard and Standard Stations, their successors or assigns, and their officers, directors, agents, representatives and all persons or corporations acting or claiming to act on their behalf be and they are hereby perpetually enjoined from selling or attempting to sell any petroleum products or any automotive accessories to any independent dealer on the condition

(a) that said independent dealer shall purchase other [fol. 351] petroleum products or automotive accessories from the defendants, or either of them;

(b) that said independent dealer shall not handle or sell at a retail outlet petroleum products and/or automotive accessories other than those sold or sponsored by defendants.

VIII

Within sixty days after this judgment shall become operative and go into effect, defendants shall send written notice by registered mail to each independent dealer with whom a defendant then has existing written or oral contractual relations of the provisions of this decree in such form as is first approved by the attorneys for the plaintiff or by the court in the event the attorneys for the plaintiff and the defendants are unable to agree on the form of such written notice.

IX

Nothing contained in this judgment shall enjoin or restrain either defendant from selling or contracting to sell petroleum products and/or automotive accessories including such products as are sponsored by defendants, to independent dealers on the condition that any pump or tank or other container or receptacle for such products, furnished by defendant and marked as such to an independent dealer, shall be used solely for the storing, handling or dispensing of defendant's petroleum products and to prescribe by agreement or regulations not inconsistent with the provisions of this decree, for the storage, handling, or dispensing of such products.

X

Nothing contained in this judgment shall enjoin or restrain either defendant from freely selecting independent dealers to whom it will sell or contract to sell any petroleum products or automotive accessories including any such products sponsored by defendant or from declining or refusing to sell or contract to sell any petroleum products or automotive accessories including any such products sponsored by defendants, to any independent dealer

provided such refusal to deal on the part of the defendants or either of them is not based on the refusal of the independent dealer [fol. 352] to accept conditions prohibited by this decree.

XI

The enforcement of this judgment is stayed until the expiration of six (6) months from the date of the entry of this judgment and, in the event an appeal is taken from this judgment or any part thereof, the enforcement of this judgment is stayed until the expiration of six (6) months from the date such appeal is finally determined.

XII

For the purpose of securing compliance with this judgment and for no other purpose, any duly authorized representative or representatives of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on notice reasonable as to time and subject matter to either or both defendants, made to its principal office at San Francisco, California, and subject to any legally recognized privilege, be permitted (1) access in the presence of defendant's counsel or other representative during the office hours of said defendant to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of said defendant relating to any matters contained in this judgment; (2) subject to the reasonable convenience of said defendant and without restraint or interference from it, to interview officers or employees of such defendant, who may have counsel present, regarding such matters, provided, however, that no information obtained by the means provided in this paragraph shall be divulged

by the Department of Justice to any person other than a duly authorized representative of such Department except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this judgment or as otherwise required by law.

XIII

Jurisdiction of this cause is retained for the purpose of enabling any of the parties to this judgment to apply to the Court at any time for such further orders and directions [fols. 353-354] as may be necessary or appropriate for the construction or carrying out of this judgment, for the amendment, modifications or termination of any of the provisions thereof, for the enforcement of compliance herewith and for the punishment of violations thereof.

XIV

Judgment is entered against the defendants for all costs to be taxed in this proceeding.

(S.) Leon R. Yankwich, United States District Judge.

Dated: June 30, 1948.

APRIL 21, 1952.

Per Curiam Decisions.

No. 395. RICHFIELD OIL CORP. *v.* UNITED STATES. Appeal from the United States District Court for the Southern District of California. Argued April 1–2, 1952. Decided April 21, 1952. *Per Curiam:* The Court is of the opinion that the issues raised by this appeal are substantially the same as those decided in *Standard Oil Co.* v. *United States*, 337 U. S. 293 (1949). Accordingly, the judgment of the District Court is affirmed. THE CHIEF JUSTICE, MR. JUSTICE DOUGLAS, MR. JUSTICE JACKSON, and MR. JUSTICE BURTON, while adhering to their views expressed in *Standard Oil Co.* v. *United States, supra*, join in affirming the judgment of the District Court in this case. MR. JUSTICE FRANKFURTER, not having heard the argument, owing to illness, took no part in the consideration or decision of this case. MR. JUSTICE CLARK took no part in the consideration or decision of this case. *Robert E. Paradise* argued the cause for appellant. With him on the brief was *William J. DeMartini*. *Assistant Attorney General Morison* argued the cause for the United States. With him on the brief were *Solicitor General Perlman, James L. Morrisson* and *J. Roger Wollenberg*. Reported below: 99 F. Supp. 280.